

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK - CRIMINAL TERM - PART: 59

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THE PEOPLE OF THE STATE OF NEW YORK,

Indict. No.
71543-2023

-against-
DONALD J. TRUMP,

CHARGE

FALSIFYING BUSINESS
RECORDS 1ST DEGREE

DEFENDANT.

ORDER TO SHOW CAUSE/
JURY TRIAL

----- X

100 Centre Street
New York, New York 10013
April 23, 2024

B E F O R E:

HONORABLE JUAN M. MERCHAN
JUSTICE OF THE SUPREME COURT

A P P E A R A N C E S:

FOR THE PEOPLE:

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Proceeding - Colloquy

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1 THE CLERK: Calling SMZ-71762-24 and SMZ-71764-24
2 Donald J. Trump.

3 Appearances, please, starting with the People.

4 MR. STEINGLASS: For the People, ADAs Joshua
5 Steinglass, Christopher Conroy, Matthew Colangelo, Susan
6 Hoffinger, Becky Mangold and Katherine Ellis.

7 Good morning.

8 THE COURT: Good morning.

9 MR. BLANCHE: Good morning, your Honor.

10 Todd Blanch and I am joined by President Trump,
11 Emil Bove, Susan Necheles and, today, Kendra Wharton.

12 THE COURT: Good morning.

13 Good morning, Mr. Trump.

14 MR. TRUMP: Good morning.

15 THE CLERK: Judge, may we approach?

16 THE COURT: Sure.

17 (Discussion is held at side-bar, on the
18 record.)

19 MR. STEINGLASS: I would like to ask for a
20 conference in your chambers about something that we are
21 going to need to make a sealed record about.

22 THE COURT: Okay. Let's go.

23 (WHEREUPON, SEALED PROCEEDINGS WERE HELD IN
24 JUDGE MERCHAN'S ROBIN ROOM.

25 (WHEREUPON, THE SEALED PORTION WAS

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1 CONCLUDED.)

2 (The following occurred in open court:)

3 THE COURT: Two matters have been called into the
4 record.

5 On April 15th, the People asked this Court to
6 sign an Order to Show Cause related to allegations that the
7 defendant had violated the Gag Order on three occasions.

8 On April 18th, the People filed another Order to
9 Show Cause alleging that the defendant had violated the Gag
10 Order on seven other occasions.

11 The purpose of this hearing is to find out
12 whether the defendant, Mr. Trump, should be held in
13 contempt of court for one or all of these alleged
14 violations.

15 I believe it is the People's burden. I will hear
16 you.

17 MR. CONROY: Thank you, Judge.

18 Is it all right, I am going to use the podium?

19 THE COURT: Of course.

20 MR. CONROY: Judge, as an initial matter, I am
21 going to hand to the Court, and to counsel, a set of
22 documents. The documents numbered 1 through 10 are the
23 alleged violations.

24 They are all documents that were part of my
25 affirmation, but just to make this part of the record of

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1 this proceeding, I am handing a copy to the Court and a
2 copy to counsel.

3 There are also four additional documents that I
4 may refer to in there separately. I would also note that
5 there is a 9A.

6 So one of the posts, post number 9, Exhibit 9, is
7 the landing page of the Truth Social post which is a
8 newspaper article that the defendant posted. 9A is sort of
9 a better version of that article which is what you would
10 see if you clicked on that article in Truth Social. It
11 would blow it up into a better printout so that it is
12 readable.

13 Judge, each of the 10 posts that I just handed
14 the Court and counsel violate the order restricting
15 extrajudicial statements that this Court issued on April
16 1st. That order amended the Court's initial order on March
17 26th of 2024.

18 Eight of the violative posts were on the
19 defendant's Truth Social account at Real Donald Trump. Two
20 of the posts were on his official campaign website Donald
21 J. Trump dot com. Each of them violates the Court's April
22 1st order which is a lawful order of this Court.

23 In that order the Court found that the types of
24 extrajudicial statements at issue pose a very real threat
25 to the integrity of the judicial proceedings by

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1 intimidating both defendant's direct targets, as well as
2 others who may be called upon to participate in these
3 proceedings and who, rightly, fear being subject for
4 vitriol and sort of the undertow affect that we worry
5 about.

6 Here, the defendant sought an emergency stay in
7 the First Department, and I will talk a little bit more
8 about that in a few minutes. That application was denied
9 on April 9th, the application for the stay and the next day
10 the post at issue here started.

11 Defendant has violated this order repeatedly and
12 he hasn't stopped.

13 I just want to note for the record that
14 yesterday, here in this building, right outside those
15 doors, in a pen setup from which he has daily conducted
16 press conferences on his way into and out of the courtroom,
17 the defendant violated the order again on camera. He did
18 it right here in the hallway outside.

19 He said, among other things, they didn't say you
20 building a building, and this is a transcript, they didn't
21 say you building a building and called a payment to a
22 lawyer because as you know Cohen is a lawyer. He
23 represented a lot of people over the years. I am not the
24 only one and he wasn't very good in a lot of ways in terms
25 of misrepresentation. But he represented a lot of people.

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1 But he puts in an invoice or whatever, a bill, and calls it
2 a legal expense, and I got indicted for that.

3 He later went on and said, and what are they
4 going to look at? All the lies that Cohen did in the last
5 trial?

6 He got caught lying in the last trial.

7 So he got caught lying, pure lying and what are
8 they going to look at? That?

9 We will be filing another Order to Show Cause for
10 this violation later today.

11 The Court has warned the Defendant, his attacks
12 on witnesses clearly violate the order willfully and
13 flagrantly. The Court should now hold him in contempt for
14 each of the 10 posts.

15 The initial Decision and Order on March 26th,
16 restricting extrajudicial statements was issued after the
17 People demonstrated a long history of attacks on all the
18 participants in the judicial process here and in other
19 jurisdictions, witnesses, jurors, judges, lawyers, family
20 members.

21 No one is off limits to the defendant and he can
22 attack and seek to intimidate anyone he wants to in service
23 to himself.

24 On April 1st, the Court issued a second order
25 restricting the defendant's extrajudicial statements. That

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1 order, your Honor, was issued because after the March 26th
2 order the defendant ratcheted up attacks on family members
3 who were not covered by that March 26th order.

4 Among other things, the April 1st order prevents
5 the Defendant from making or directing others to make
6 public statements about known or reasonably foreseeable
7 witnesses concerning their potential participation in the
8 investigation or in this criminal proceeding.

9 And in a second relevant provision, prevents the
10 defendant from making or directing others to make public
11 statements about any prospective juror or any juror in this
12 criminal proceeding.

13 The defendant was warned that he would face
14 sanctions under Judiciary Law 750, (a) (3) and 751 if he
15 violated, and here we are.

16 Judge, I am going to go through the violations of
17 the 10 posts that I just handed up.

18 The first violation was on April 10, 2024, at
19 10:07 a.m. The defendant published a post on his Truth
20 Social account that reproduced a social media post by
21 Michael Avenatti, the former lawyer of Stormy Daniels who
22 was later convicted of stealing from her.

23 The Avenatti post stated, we can't be hypocrites
24 when it comes to the First Amendment. It is outrageous
25 that Cohen and Daniels can do countless TV interviews, post

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1 on social and make money on bogus documentaries, all by
2 talking shit about Trump, but he's gagged and threatened
3 with jail if he responds.

4 To that the defendant added in his own words,
5 thank you to Michael Avenatti for revealing the truth about
6 two sleazebags who have with their lies and
7 misrepresentations cost our country dearly.

8 The second post that same day --

9 THE COURT: If I can interrupt for one second.

10 Can you make the connection between that post and
11 the conditions of the Gag Order specifically, so what you
12 already read, making or directing others to make public
13 statements about known or reasonably foreseeable witnesses
14 concerning the potential participation in the investigation
15 or in this criminal proceeding?

16 Can you connect that for me?

17 MR. CONROY: Well, the first part of that,
18 clearly Stormy Daniels and Michael Cohen are known or
19 reasonably foreseeable witnesses here. I think that's been
20 clear for a long time; and by calling them sleazebags, by
21 going after their credibility, I think that's all part of
22 the plan for this trial, and there is no other reason to be
23 talking about that then related to this.

24 It's five days before we are going to be here to
25 pick a jury. It's the defendant conditioning his followers

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1 related to this proceeding.

2 THE COURT: Thank you.

3 I will be asking you the same question for each
4 of the 10.

5 MR. CONROY: Thank you.

6 April 10, 2024 at 10:48 a.m., the defendant
7 published a post on his Truth Social account that contained
8 a picture of a document and that document, by the way, will
9 be at issue in this case.

10 The document was entitled, Official Statement of
11 Stormy Daniels, dated January 30, 2018, which refers to
12 facts that are directly at issue here. The defendant
13 accompanied the picture with his own statement, look what
14 was just found from a fake news reporter.

15 Again, Judge, that is a document with respect to
16 the first subsection in the order. It is a document that
17 relates to a reasonably foreseeable witness in this
18 proceeding. It is a document that relates, specifically,
19 to things that she'll testify about in this proceeding.

20 And so, I don't think there is any other
21 interpretation of that post, again, posted five days before
22 jury selection, than that it relates to this proceeding.

23 On April 13, 2024, at 12:56 p.m., the defendant
24 posted a post on his Truth Social account and stated, has
25 Mark Pomerantz been prosecuted for his terrible acts in and

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1 out of the DA's Office. Has disgraced attorney and felon,
2 Michael Cohen, been prosecuted for lying. Only Trump
3 people get prosecuted by this judge and these thugs. A
4 dark day for our country. MAGA 2024.

5 Here again, Judge, Michael Cohen is a reasonably
6 foreseeable witness. Throughout the pendency of this case
7 defendant and others have tried to make Mark Pomerantz
8 somehow an issue in this case. This is, again, going after
9 Michael Cohen's credibility, which is a recurring theme in
10 these posts and, frankly, was a theme yesterday in the
11 opening statement for this case.

12 And so, I think it's pretty clear now that we are
13 two days before jury selection and the defendant is again
14 going after Michael Cohen.

15 On April 15, 2024 at 9:12 a.m., and this is while
16 the defendant was likely in the courthouse, the defendant
17 published a post on his Truth Social account that stated, a
18 serial perjurer will try to prove an old misdemeanor
19 against Trump in an embarrassment for the New York Legal
20 System.

21 The post contained a link to an article in the
22 New York Post. Clearly a reference to Michael Cohen.
23 Clearly a reference to this proceeding.

24 And so, I think, again, that link to the order is
25 pretty clear with respect to this post.

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1 That same day, about an hour and 15 minutes
2 later, the defendant posted the same post again on his
3 Truth Social account. And for the same reasons, it is
4 clearly related to these proceedings and to a reasonably
5 foreseeable witness in the case.

6 Again, that same day, April 15, 2024, on his
7 official campaign website, just to make sure the word fully
8 got out, the defendant published a link to an article from
9 the New York Post with the following introduction, ICYMI,
10 which my understanding is it means, in case you missed it,
11 and then a colon, and then the same link that he had posted
12 twice previously that day, a serial perjurer will try to
13 prove an old misdemeanor against Trump in an embarrassment
14 for the New York Legal System.

15 Again, specific reference both to this proceeding
16 and to a reasonably foreseeable witness in the case.

17 The next day on April 16, 2024, and we are on
18 Exhibit 7 that I handed up, so I should have been giving
19 those numbers as I went along.

20 On April 16, 2024, 1:50 in the afternoon, the
21 defendant published a post on his Truth Social account that
22 stated, it's, again, the same post that we have just been
23 referring to and it contained the same link to the article.

24 That same day on his official campaign website,
25 he again posted the, in case you missed it, with the link

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1 to the serial perjurer will try to prove an old misdemeanor
2 against Trump in an embarrassment to the New York Legal
3 System.

4 Again, those are so clearly related to a
5 reasonably foreseeable witness in this proceeding.

6 On April 16, 7:09 p.m. -- the other thing to keep
7 in mind, and I know your Honor knows this, I am just going
8 to say it for the record, this is while we are on trial.
9 The trial has now begun.

10 On April 16th, at 7:09 p.m., the defendant
11 published a post on his Truth Social account that contained
12 an article attacking the testimony of Michael Cohen. The
13 article had a picture of Michael Cohen with the headline,
14 no, Cohen's guilty pleas does not prove Trump committed
15 campaign finance crimes. The entire article was embedded
16 in the post.

17 And, again, that's what I handed up as 9A. If
18 you clicked on various parts of the article, the particular
19 page of the article would come up in a more readable form.
20 The whole thing was visible when you clicked into Truth.

21 And, again, reasonably foreseeable witness,
22 direct reference to this proceeding, very clear link to the
23 order that this Court issued on April 1st.

24 The next day, and this was last Wednesday, April
25 17th, and, again, this is a very troubling post at 5:46

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1 p.m., the defendant published a post on his Truth Social
2 account that stated, they are catching undercover liberal
3 activists lying to the Judge in order to get on the Trump
4 jury.

5 I want to give the court a little bit of context
6 for that Truth.

7 And that is a quote. That whole thing is in
8 quotation marks. It's attributed to somebody named Jesse
9 Watters. On that day, last Wednesday, there was a segment
10 on a Fox News show called, At Five, that airs at 5:00 in
11 the afternoon.

12 On that show Jesse Watters, who is one of the
13 commentators, spoke about the jurors who had been seated or
14 were being interviewed in this case in a derogatory way.
15 Mr. Watters said the first part of what Mr. Trump posted.
16 He said the first part, in order to get on the Trump jury.

17 Now, Mr. Watters may have said things like, in
18 order to get on the Trump jury, later in that episode or
19 later that night when he has another show at 8:00, but he
20 didn't say it at 5:08 on his show, and this post came at
21 5:46, about 30 minutes later, give or take.

22 THE COURT: What exactly did he say?

23 MR. CONROY: So he said -- what Mr. Watters said
24 was, they are catching undercover liberal activists lying
25 to the Judge, period.

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1 What was in the quotation on the defendant's
2 Truth was, they are catching undercover liberal activists
3 lying to the Judge in order to get on the Trump jury.

4 So it is a hybrid of something somebody else said
5 together with something the defendant, apparently, added on
6 his own.

7 I think the link to the jurors in this case, to
8 this proceeding, I think it's very clearly a violation of
9 your order on April 1st and so, that deals with that.

10 The other piece I want to add to that is if you,
11 I am sure, again, I am sure you remember, but for the
12 record, this was last Wednesday evening, that this was
13 going on and Mr. Watters in his segment was giving lots of
14 details about the various jurors.

15 The next day was the day juror two came in and
16 said, I don't think I can be on this anymore because of
17 publicity and things she was hearing from friends and
18 acquaintances and everything else, so we ended up losing a
19 juror.

20 What happened here is precisely what this order
21 was designed to prevent, and this defendant doesn't care.

22 The burden here, Judge, is on us. And, Judge,
23 that's the 10 posts. I don't know if you have any
24 questions specifically about those or I was going to move
25 on.

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1 THE COURT: You can move on.

2 MR. CONROY: The burden here is on us to show the
3 existence of a lawful order expressing an unequivocal
4 mandate, a violation of the order, and that the violation
5 was made with knowledge and is willful beyond a reasonable
6 doubt.

7 The Court's Order of April 1st, is clear and
8 unequivocal and it is lawful. It has been challenged a
9 couple of times here and it was challenged in the First
10 Department. A stay was denied.

11 One of the bases for issuing a stay would be
12 possibility or likelihood of success. That stay was
13 denied. There is ongoing litigation there, but right now
14 this is a lawful order in front of this Court.

15 He violates the order when he posts about known
16 witnesses or reasonably foreseeable witnesses concerning
17 their participation in this criminal proceeding and he
18 violates the order when he posts about a juror or
19 prospective juror.

20 And, Judge, that language is a broad prohibition
21 with respect to the jurors, about statements about the jury
22 here. It is not limited to a statement about a
23 particularly identifiable juror.

24 Counsel in their papers inserts the word,
25 individual, in the filing on page seven in an effort to

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1 argue that this provision is ambiguous.

2 The order is clear, notwithstanding the
3 defendant's willingness to make arguments that conflict
4 with the facts and at times with each other. And the
5 clarity is stark with respect to this provision related to
6 jurors, particularly when contrasted to the more specific
7 language that modifies witnesses, the Court and DANY
8 personnel.

9 Judge, I would just refer to some of the
10 language.

11 And I won't read it, some of the language in the
12 Court's April 1st order, talking about why it is so
13 important to issue that order now based on the defendant's
14 history, based on this proceeding, and based on what was
15 going on.

16 There is no doubt that this defendant made these
17 statements. And I just want to talk a little bit more
18 about the back and forth on that last post, the 10th post
19 with Jesse Watters because I think those two -- the
20 defendant's willfulness in these posts, defendant took
21 something that Jesse Watters said, added to it and posted
22 it. And it came from a segment specifically discussing
23 juror profiles in this case.

24 He did it about 40 minutes after Jesse Watters
25 said part of the statement. To me, that shows very clear

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1 deliberation and willfulness in making the post.

2 All of the posts here are made concerning this
3 criminal proceeding. We know that from the proximity. We
4 know that from the words. We know that because they are
5 consistent with the defense in this case as outlined in
6 counsel's opening yesterday. It's very clear that they
7 relate to this case.

8 I am not sure how there could be a straight-faced
9 argument that these posts, all within the last 12 days or
10 so, some of them echoed in counsel's opening yesterday,
11 relate to anything other than this criminal proceeding.
12 Throwing MAGA into a post doesn't make it political. It
13 may make it more ominous.

14 Defendant's 10 posts at issue today are willful
15 violations of the Court's order on April 1st. The
16 defendant knows the terms of the April 1st order.

17 He has repeatedly complained about the order on
18 his social media account, including, among others, and I
19 handed the posts up in the packet that I handed up of the
20 10 violations, there is a post from April 2nd, from April
21 6th and from April 10th and 11th.

22 THE COURT: Is that Exhibits 12, 13 and 14?

23 MR. CONROY: Yes. Exhibit 12, is April 2nd.
24 Exhibit 13 is April 6th. Exhibit 14 is April 10th. And
25 Exhibit 15 is actually a screenshot that would appear on

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1 the Truth Social page. If you clicked it, it is a video in
2 which the defendant is actually speaking about the Gag
3 Order and the fact that kind of what he says is he is
4 gagged but he is referring to it.

5 He refers to the order's restrictions and attacks
6 the Court as conflicted.

7 The defendant has engaged in multiple rounds of
8 briefing involving the April 1st order and its earlier
9 version, the March 26th order, including filings in this
10 court and in the Appellate Division up to and including his
11 response to this Order to Show Cause on Friday, on the
12 19th.

13 In each, the defendant has engaged in details
14 with the order-specific directives, his Appellate Division
15 filings specifically criticizes and seeks to prohibit
16 enforcement of the April 1st order's restrictions on his
17 extrajudicial statements regarding Michael Cohen and Stormy
18 Daniels.

19 In paragraph nine of the defendant's verified
20 Article 78 Petition, filed by counsel, they complain that
21 the article -- that the April 1st order forbids the
22 defendant from responding to so-called attacks by Michael
23 Cohen and Stormy Daniels.

24 And yet, that's part of their argument here is
25 that he is allowed to respond to these attacks. So in the

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1 First Department they are saying he's forbidden. He knows.
2 He is forbidden. That's what the order says.

3 And yet, they want to come now and claim and
4 muddy the waters and say, Judge, well, we can respond to
5 attacks.

6 There is no provision in this order for
7 responding to attacks.

8 They have repeatedly cited to a line in which the
9 Court does say that the defendant can respond to political
10 attacks and try to morph them into a massive exception to
11 the order, which it is not and it is clearly not and the
12 Court should not be swayed by that.

13 I would also just note that this is not the first
14 time there have been filings in different courts with
15 inconsistent representations or assertions and I submit
16 that they can't be taken seriously.

17 When we examine the defendant's words and his
18 actions, it is clear that he knows about the order, he
19 knows what he is not allowed to do and he does it anyway.
20 There can't be any question that he is aware of what the
21 order requires and that knowledge alone indicates that his
22 disobedience of the order is willful. It's intentional.

23 Even if his asserted ability to respond to
24 attacks can be used as political or based in fact on the
25 order, and it is not. There is no indication that his

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1 claim that he is responding to attacks is anything more
2 than an after the facts justification for his contumacious
3 behavior.

4 It is not clear at all that he was aware of the
5 posts he claims he was responding to at the time he made
6 the post that violates the Court's order. Nothing on the
7 face of the post indicates that. By his logic, if someone
8 covered by the order says something mean or not nice about
9 him, he can respond because the attack is political, I
10 suppose, because by talking about the defendant, the
11 speaker is a public figure or because the defendant is
12 running for office, again, it makes no sense.

13 He says whatever he needs to say to get the
14 results that he wants. It's tortured at best and would
15 eviscerate the clear language and meaning of this order if
16 the Court were to adopt that.

17 The Court and the People have made clear that the
18 April 1st order leaves the defendant substantial room to
19 engage in speech about this criminal proceeding, including
20 criticisms of the Court and District Attorney. The
21 defendant has shown his ability to understand the
22 significant leeway left to him by making multiple social
23 media posts and other public statements that criticize the
24 criminal trial without violating the April 1st order.

25 By going beyond those criticism and launching

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1 specific, separate attacks on two witnesses and by
2 attacking prospective jurors or juror, the defendant is
3 nothing less than knowingly and willfully, that is
4 intentionally, breaching the crystal clear, unequivocal
5 lines set by this Court in the April 1st order to protect
6 the integrity of this proceeding.

7 I am just going to talk a little bit about
8 another argument that the defendant made in his papers
9 where he claims that what he calls, reposts, are not his
10 statements.

11 In fact, some of his most dangerous statements,
12 including one we brought to the Court's attention as early
13 as arraignments last year, that photo of the defendant
14 holding the bat at the head of the District Attorney, are
15 what he wants to carve out of the order by calling them
16 reposts. That flies in the face of common sense and I am
17 going to draw an analogy which is not perfect but I think
18 is helpful.

19 New York Defamation Law has made clear for over a
20 hundred years that one who repeats or otherwise republishes
21 a defamatory matter is subject to liability as if he had
22 originally published it.

23 That's Geraci versus Probst, 15 New York 3rd 336.
24 And I can hand up copies if you like. I will do that at
25 the end.

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1 THE COURT: Sure.

2 MR. CONROY: Here we are dealing with a court
3 order that specifically prohibits certain types of
4 extrajudicial statements and that clearly includes posts on
5 defendant's Truth Social account and on his campaign
6 website whether he is the original author or posting the
7 words of another. And as the Court noted the other day,
8 the law is clear that a party may not challenge a Court's
9 order by violating it.

10 Your Honor, the Judiciary Law authorizes the
11 Court to impose a fine not exceeding a thousand dollar or
12 to sentence the contemnor to no more than 30 days jail or
13 both in the discretion of the Court. That is in Judiciary
14 Law 751, and that's for each finding of contempt.

15 We are not yet seeking an incarceratory penalty.
16 The defendant seems to be angling for that.

17 For today, for these 10 violations of this
18 Court's April 1st Order, we are asking the Court to impose
19 the maximum number, \$1,000 fine for each of the 10
20 violations.

21 We are also asking the Court to order the
22 Defendant to remove all 10 offending posts, eight from his
23 Truth Social account, and two from his campaign website, to
24 take those down.

25 Finally, for the Court to again warn the

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1 defendant that this conduct will not be tolerated and
2 remind him that incarceration is an option should it be
3 necessary.

4 The defendant is having his day in court.
5 Unfortunately, he is still doing everything he can to
6 undermine this process. It has to stop.

7 A finding of criminal contempt, imposition of
8 sanctions and stark warnings from this Court are the
9 minimum remedies necessary to try to stop the defendant
10 from engaging in this behavior.

11 Thank you.

12 THE COURT: Thank you, Mr. Conroy.
13 Counsel.

14 MR. BLANCHE: Thank you, your Honor.

15 There is -- just to set the record very straight
16 and clear, President Trump does, in fact, know what the Gag
17 Order allows him to do and not allow him to do and there
18 was absolutely no willful violation of the Gag Order in the
19 10 posts and released by the campaign that the People just
20 discussed.

21 There is no dispute that President Trump is
22 facing a barrage of political attacks from all sides,
23 including from the two witnesses who are referenced in the
24 early posts. And I am going to separate, your Honor, if I
25 can, the reposts from the first round of alleged violations

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1 involving the Avenatti comment and the comment regarding
2 Mr. Cohen not being convicted of perjury and the comments
3 about Ms. Clifford and Mr. Cohen. Okay.

4 Those comments, those three posts, were in direct
5 response to comments made by these witnesses, not about
6 these criminal proceedings, your Honor, not about their
7 testimony at the witness stand and President Trump's
8 comments back to them was not about their testimony from
9 the witness stand.

10 THE COURT: When you say, these three posts, just
11 so I can follow them, can we adopt the number used by the
12 prosecution?

13 If you can refer me to this, what you are talking
14 about.

15 MR. BLANCHE: The first was a repost from
16 President Trump's Truth Social regarding Mr. Avenatti.
17 Commenting about the hypocrisy of the Gag Order and making
18 the point that, which is true, that the witnesses
19 themselves can constantly comment about whatever they want.
20 They are not gagged. And President Trump, in theory,
21 cannot respond.

22 Now, as we put in our papers, and the People
23 don't contest except to say there is no evidence from the
24 Truths that President Trump knew about these, Michael Cohen
25 directly responded to this comment by Avenatti,

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1 politically. Not about the testimony. Not about what he
2 is going to say in court. And so, President Trump --

3 THE COURT: Do you have that? Do you have a copy
4 of that?

5 MR. BLANCHE: Your Honor, it's in our papers on
6 page four. It's -- I can read it into the record, your
7 Honor.

8 THE COURT: Sure. If you can tell me what time
9 that was.

10 MR. BLANCHE: Sure. 9:21, 4/10 is the original
11 post from somebody who says, seems to me that Avenatti was
12 thrown a Hail Mary on a pardon should the orange menace get
13 elected.

14 Mr. Cohen responds, he will be very disappointed
15 as Trump will never pardon him because he doesn't care
16 about him anyway.

17 So, obviously, pardon is political. It has
18 nothing to do with this case, your Honor, and so, when
19 President Trump comments about what Mr. Avenatti is saying,
20 complaining about the Gag Order and a comment that Mr.
21 Cohen has made about it, that's political. He is allowed
22 to respond to political attacks.

23 THE COURT: I want to make sure I am following
24 you.

25 Going back to number one, Mr. Avenatti's post was

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1 at 10:07 a.m.

2 Can you confirm what time Mr. Cohen's post was?

3 MR. BLANCHE: I don't have that in front of me.

4 THE COURT: It's just been handed to me.

5 So, Mr. Cohen's post, I believe was at 9:21. So,
6 that would precede Mr. Avenatti's post.

7 MR. BLANCHE: Well, your Honor, to be clear,
8 Mr. Avenatti had been saying things like this publicly.
9 There have been news articles about it that he had been
10 saying it. So he has been -- he has somebody on the
11 outside, a Federal person, that is pushing articles, and to
12 be -- and, your Honor, there is no dispute that Mr. Cohen
13 has repeatedly talked about the fact that, again, not for
14 having to do with his testimony about how President Trump
15 acted with respect to pardons while in office --

16 THE COURT: I want to take one at a time,
17 otherwise, it's going to get really confusing.

18 Let's take number one, what I see is Mr. Cohen's
19 post at 9:21. Mr. Avenatti's response appears to be at
20 10:07 or is that when it was reposted by Mr. Trump?

21 MR. BLANCHE: Yes, correct.

22 THE COURT: It was reposted by Mr. Trump?

23 MR. CONROY: I believe that's correct.

24 THE COURT: And it's your position that what
25 makes this political is the reference of being pardoned.

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1 MR. BLANCHE: Well, two things make it political.
2 The reference to be pardoned, but also what
3 President Trump writes in response to what Mr. Avenatti is
4 saying, nothing about this case, Your Honor, but that they
5 can do TV interviews, post on social, make money, have
6 documentaries, all while talking about President Trump, but
7 he is gagged and threatened with jail if he responds.

8 Then, again, the social media posts he is
9 referring to from these witnesses, the documentaries he is
10 referring to from these witnesses, the money that they have
11 made because of President Trump, the TV interviews, all of
12 those things, your Honor, while they certainly bring up the
13 fact that they are testifying, they are talking about their
14 very strong dislike of President Trump, their very strong
15 desire for him not to win the election and for him to no
16 longer be in power.

17 THE COURT: Let's stick with what was actually
18 said. I don't want to get into interpreting things. Let's
19 stick with what was actually said.

20 Going back to number one.

21 What is it about Mr. Cohen's post that makes it
22 political?

23 MR. BLANCHE: Well, Mr. Cohen's post talks about
24 whether Mr. Avenatti will get a pardon.

25 THE COURT: So the pardon, the pardon is what

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1 makes it political?

2 MR. BLANCHE: Of course. Yes, your Honor.

3 Your Honor, says you don't want to interpret or
4 read into it, but we have to be able to have some inference
5 for what Mr. Avenatti means when he is saying that.

6 THE COURT: Have you spoken with Mr. Avenatti
7 about what he means?

8 MR. BLANCHE: No. Of course, no.

9 THE COURT: How can you interpret what he means
10 when you haven't spoken to him?

11 MR. BLANCHE: From his words. His words say --
12 he doesn't talk about what Mr. Avenatti believes they are
13 going to say on this witness stand or what happened in the
14 charged conduct. It says what they have been doing on TV,
15 the social media posts and on documentaries.

16 THE COURT: I just want to make sure I
17 understand.

18 You believe that everything that Mr. Avenatti
19 said does not relate to the trial, but that the use of the
20 word, pardon, by Mr. Cohen does make it political and, in a
21 sense, authorize your client to respond?

22 MR. BLANCHE: Not just the word, pardon, but yes,
23 the word pardon too.

24 But, Judge, it just -- it's everything. It just
25 can't be a single word. When Mr. President Trump is

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1 responding to these attacks --

2 THE COURT: When your client is violating the Gag
3 Order, I expect more than one word.

4 MR. BLANCHE: Your Honor, we are here to
5 determine --

6 THE COURT: I haven't determined anything yet. I
7 am simply responding to what you are saying. You are
8 suggesting that merely the use of the word, pardon, is
9 sufficient to allow your client to violate a Gag Order.

10 MR. BLANCHE: No, that's absolutely not what we
11 are saying, Your Honor. Absolutely not.

12 What we are saying is: A, President Trump is
13 allowed to respond to political attacks.

14 B, and more significantly, if he is talking about
15 witnesses, it can't have anything to do with these
16 proceedings.

17 Judge, remember why that exists. The reason why
18 this restrictive language in your order exists is from the
19 DC Court of Appeals.

20 As your Honor, will recall, the original Gag
21 Order --

22 THE COURT: I remember.

23 MR. BLANCHE: I don't mean to relive that, but
24 that's the point, is that in the DC Circuit in reaching its
25 decision addressed why we are here today and said that,

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1 that there will be times when it is difficult to determine
2 whether a statement concerns a witness' potential
3 participation in the investigation or the criminal
4 proceeding or a response to an attack, political --

5 THE COURT: That's why I am going to be asking
6 you, in the same way I asked the People, for each one of
7 their exhibits, to explain to me what made it political.

8 I am going ask to you, after each exhibit, what
9 precisely, is it that your client is responding to?

10 Lead me to the attack he is directly responding
11 to in each one of these.

12 MR. BLANCHE: He is responding to the fact that
13 there was -- that Mr. Cohen has repeatedly talked about his
14 qualities and candidacy for office of the President.

15 THE COURT: There is no specific post that you
16 are referring to?

17 MR. BLANCHE: No.

18 THE COURT: It is a repeated post?

19 MR. BLANCHE: That's where it refers to the
20 actual language of the Gag Order, which is that so long as
21 the discussion and comment isn't about the participation in
22 this, it cannot be the mere time, meaning because it is a
23 couple of days before the trial starts, that's it, beyond a
24 reasonable doubt, that's willful.

25 Right, meaning -- what I mean by that is Mr.

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1 Cohen, in particularly, and also Ms. Daniels, have ramped
2 up their political attacks and their attacks on him as a
3 candidate in the weeks leading up to the trial as well.

4 THE COURT: It is the timing that has me a little
5 bit confused. You referred to repeated attacks.

6 Yet, this first exhibit didn't happen until, was
7 it the day after the matter was brought to the Appellate
8 Division?

9 So your client waited until after, the day after
10 the matter was brought to the Appellate Division, and the
11 stay was denied, to decide if he would respond, not to a
12 recent attack, but to a series of attacks -- can you
13 understand why I am curious about that -- rather than
14 responding a day before or two days before or three days
15 before?

16 MR. BLANCHE: The timing of the response, your
17 Honor, appreciating it was a day after the Appellate
18 Division, when we were in the Appellate Division, they were
19 alluding to today.

20 One of our main arguments was that we would be
21 here for this kind of issue. That there was something
22 ambiguous about what it would mean to attack a witness, a
23 foreseeable witness, but, your Honor, not about the
24 criminal proceeding of why they are here.

25 And so, your Honor, I appreciate the question

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1 about the timing, but the timing is just the timing.

2 And, I mean, President Trump chose repeatedly,
3 all day, virtually seven days a week, your Honor -- and by
4 the way, well, we will get to the reposts in a moment, your
5 Honor, but the same is true for --

6 THE COURT: Can we go on to Exhibit Number 2?

7 MR. BLANCHE: Yes, your Honor.

8 So, again, this is a document, as the Court
9 knows, that's been in the public record and part of the
10 public dialogue for many, many years.

11 And I do not dispute the People's position that
12 this document will be discussed at this trial potentially.
13 No dispute there.

14 But, again, you have a witness who is not talking
15 about her testimony here, but talking about President
16 Trump's qualifications for office and whether he should be
17 President.

18 THE COURT: This was a response to what specific
19 attack?

20 MR. BLANCHE: To, well, there have been --
21 again --

22 THE COURT: You pulled this out and this is
23 six-years old when he pulled it out. So I am assuming that
24 there must have been a very recent attack to cause him to
25 pull out a document that's six-years old and was going to

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1 be used at trial.

2 MR. BLANCHE: It's not that it was pulled out.
3 It is a public document. It's publicly available, Judge.

4 THE COURT: It says, look what was just found.
5 Was that just found.

6 MR. BLANCHE: No, absolutely not.

7 THE COURT: So that's not true? That's not true?

8 MR. BLANCHE: That is not true. I don't think
9 anybody thinks that's true. Everybody has seen the
10 document for years and years.

11 THE COURT: Whether somebody thinks it is true or
12 not, I need to clarify and I need to understand what I am
13 dealing with.

14 MR. BLANCHE: As we note in our papers, your
15 Honor, this is a document that is available to the public
16 for years and years.

17 And, yes, President Trump chose the words, look
18 what we just found, it's true. It is a communication to
19 his -- to the folks that he is trying to message to.

20 Again, not about the witness' testimony at trial,
21 but about her credibility. There is not a link between
22 this document --

23 THE COURT: Credibility really doesn't matter a
24 whole lot on this unless she is taking the stand at trial,
25 right?

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1 MR. BLANCHE: Judge, that's not true. This is
2 not true. Sure, her credibility will be at issue at this
3 trial. Her credibility, when she is broadcasting to all of
4 her followers on Twitter and talking to the press and
5 having documentaries, her credibility matters. It does
6 matter in this courtroom.

7 But he is running for President. He has to be
8 able to respond to that.

9 THE COURT: All right. So that was Exhibit
10 Number 2.

11 I asked, again, what specifically he was
12 responding to. I didn't get an answer to --

13 MR. BLANCHE: I did answer you. Yes, I will
14 answer you again.

15 There was repeated, repeated specific --

16 THE COURT: Give me one. That's not specific.
17 Give me one that he was responding to here.

18 MR. BLANCHE: Yes, your Honor. So there was -- I
19 don't have a particular tweet that it was responding to.

20 What we included in our papers, your Honor, is an
21 example -- in addition to the documentary that came out,
22 which is very critical and, again, your Honor, says that
23 timing matters, right? Why?

24 THE COURT: I am asking the questions. Okay.

25 I am going to decide whether your client is in

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1 contempt or not. So please don't turn it around.

2 What I do see is I keep asking you over and over
3 again for a specific example, and I am not getting an
4 answer. And it's now almost 10:30.

5 The jurors are going to be here at 11:00. I
6 don't want to keep them waiting. So we are only up to
7 Exhibit Number 2.

8 MR. BLANCHE: The People got to speak as long as
9 they wanted to.

10 THE COURT: The People were answering my
11 questions. It's almost 10:30. We are only up to Exhibit
12 Number 2.

13 Let's go to Exhibit Number 3 and tell me what he
14 was responding to in Exhibit Number 3.

15 MR. BLANCHE: Your Honor, Exhibit 3 has nothing
16 to do with this investigation. It's a complaint about the
17 system, which President Trump is completely entitled to
18 complain about. And the fact that there is a key witness
19 in this case who is in prison right now for lying at a
20 proceeding that Mr. Cohen also lied at.

21 And, again, it has nothing to do with his
22 testimony here.

23 THE COURT: He or his comrades? Make the
24 connection to what he is responding to in Exhibit Number 3
25 when he is referring to Mark Pomerantz.

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1 MR. BLANCHE: He is asking whether Mr. Pomerantz
2 has been prosecuted for violating Grand Jury secrecy rules.

3 THE COURT: Why? Pardon me.

4 Why? Why does he have to bring up a witness he
5 knows is a witness?

6 MR. BLANCHE: No. Mr. Pomerantz is not a
7 witness.

8 THE COURT: He is not on the witness list?

9 MR. BLANCHE: No. I believe they are complaining
10 about this one, your Honor, the third line down, has
11 disgraced attorney and felon Michael Cohen been prosecuted
12 for lying.

13 That is what I was addressing when I said that
14 the objection and the statement there has nothing to do
15 with this case. It has to do with the system and the fact
16 that President Trump very strongly believes that the People
17 should have prosecuted Mr. Cohen for lying, just like they
18 prosecuted --

19 THE COURT: So he is attacking Mr. Michael
20 Cohen's credibility just like he was attacking Stormy
21 Daniels' credibility.

22 MR. BLANCHE: No. He is attacking the People and
23 system for not prosecuting Mr. Cohen for lying.

24 Right. Look, that's been a theme that President
25 Trump talked about repeatedly and for good reason. It

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1 seems that there are two systems of justice,
2 Mr. Weisselberg is in prison and Mr. Cohen is going to be a
3 witness.

4 That's attacking the system, not Mr. Cohen. And
5 it certainly --

6 THE COURT: Except that he makes the connection.
7 The name that you refer to is Mr. Cohen.

8 MR. BLANCHE: It does mention him by name.
9 That's not prohibited by your Honor's Gag Order.

10 THE COURT: Using the name is not prohibited.
11 Making the connection to the trial is prohibited.

12 Making a connection to the witness or the
13 prospective jurors for the trial makes it prohibited.

14 MR. BLANCHE: I am sorry. I didn't mean to
15 interrupt. We are not making a connection to this trial at
16 all.

17 It says, disgraced attorney, Michael Cohen, has
18 been prosecuted for lying. That has nothing to do with
19 this trial. That is a question about whether he was
20 prosecuted for his testimony in another case several months
21 ago.

22 THE COURT: What caused that response?
23 What was he responding to?

24 MR. BLANCHE: Well, he is responding to the fact
25 that he is extremely frustrated with the two systems of

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1 justice that are happening in this courtroom and he is
2 entitled to respond to this.

3 (Whereupon, Principal Court Reporter, Susan
4 Pearce-Bates, was relived by Senior Court Reporter, Lisa
5 Kramsky.)

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1 *****

2 (Continued from following page.)

3 THE COURT: Two systems of justice in this
4 courtroom; is that what you're saying?

5 MR. BLANCHE: That's what his message is, your
6 Honor, that Mr. Weisselberg is in prison and Mr. Cohen is
7 not.

8 That's not the first time that this has been said.

9 THE COURT: It's not.

10 MR. BLANCHE: No, it's not.

11 And, Judge, as your Honor has made plain, that's
12 fair game.

13 And as the law may explain and the constitution may
14 explain, that's fair game for President Trump to complain
15 about.

16 And to focus on the reposts now, if your Honor
17 wants to move to the reposts?

18 THE COURT: We can.

19 MR. BLANCHE: Okay.

20 THE COURT: Just before we get to the reposts, when
21 we get to each specific repost, just tell me what number you
22 are referring to.

23 MR. BLANCHE: I'm referring to the remainder, many
24 of them -- just two, the same posts just kind of reworked on
25 a different, either on Truth or through the campaign.

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1 Judge, this goes directly to the willfulness that
2 your Honor has to find beyond a reasonable doubt for
3 President Trump.

4 There have been multiple reposts since your Honor
5 has imposed the Gag Order, and then the second Gag Order
6 that the People have not complained about.

7 And we mentioned a few in our papers involving the
8 recusal motion and things that if, if the People really --
9 if the People felt or the Court felt that a repost was a
10 violation, it's not a statement by President Trump.

11 And so, Judge, it's that --

12 THE COURT: No, I read that in your papers and I
13 actually want to respond to that.

14 MR. BLANCHE: Please.

15 THE COURT: That suggests that somehow because the
16 People or the Court do not take action for every single
17 violation that the Gag Order is waived; that's just silly.

18 MR. BLANCHE: That's absolutely not what we're
19 saying.

20 THE COURT: No, it is what you're saying.

21 No, first of all, you suggested that the Court
22 should do something.

23 I think you understand the difference between what
24 is a summary criminal contempt and what is not a summary
25 criminal contempt.

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1 Unless that occurs in my presence before me, the
2 Court is not going to bring an action, okay.

3 As far as why the People chose to implore some and
4 not others, that's their business, but that doesn't negate
5 the validity of the Gag Order.

6 MR. BLANCHE: And, your Honor, if that came out in
7 our papers, that is absolutely not our position.

8 Our position is that your Honor has to find a
9 willful violation beyond a reasonable doubt.

10 And it is certainly appropriate for the Court to
11 take into consideration whether President Trump's conduct
12 was willful beyond a reasonable doubt.

13 The fact that, you know, when he reposted the ones,
14 Exhibits 3 through 10, the fact that he had reposted many
15 others, and the People had not brought an Order to Show
16 Cause, it's not making a mockery of the Gag Order, your
17 Honor. It's a close call.

18 THE COURT: Well, what is it if your argument is
19 not that somehow the validity of the Gag Order is waived,
20 then what is your argument because that's what it sounds
21 like to me.

22 MR. BLANCHE: No, because the posts --

23 THE COURT: No, the People did not bring an Order
24 to Show Cause for certain alleged violations, therefore,
25 he's allowed to violate whenever he wants?

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1 MR. BLANCHE: Your Honor, the Gag Order prevents
2 him or him causing somebody to violate the terms.

3 Reposting an article from a news site or from a
4 news program or, you know, a New York Post article or the
5 articles that are in Exhibits 3 through 10, we don't believe
6 are a violation of the Gag Order.

7 THE COURT: All right. So let's talk about that.
8 That I want to talk about.

9 MR. BLANCHE: Okay.

10 THE COURT: So tell me what case law you have to
11 support that?

12 MR. BLANCHE: I don't have any case law to support
13 that, but it's just common sense, your Honor.

14 How can it be that President Trump is prohibited
15 from violating the Gag Order through his words or by causing
16 another person to say something that he was saying --

17 THE COURT: All right.

18 MR. BLANCHE: -- which is a big difference under
19 the First Amendment under the constitution.

20 THE COURT: All right. Where does it say that,
21 give me the case law?

22 MR. BLANCHE: Your Honor, there is none. I don't
23 believe --

24 THE COURT: What I'm asking you, when we are
25 talking about these reposts, how does it get there? How

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1 does it get onto your client's Truth Social account?

2 I post something and I post it on my account and
3 then it winds up on your client's account; how does it get
4 there?

5 MR. BLANCHE: There is a group of folks that work
6 with President Trump that when they see articles that they
7 believe President Trump's audience should read they, you
8 know, there is a mechanism.

9 I'm not --

10 THE COURT: What is the mechanism?

11 MR. BLANCHE: So, I believe you click on it and you
12 do something to repost it on President Trump's feed.

13 THE COURT: It requires some sort of action?

14 MR. BLANCHE: Of course, yes, yes.

15 THE COURT: It's not as if -- I'm looking for the
16 decision that I read yesterday -- it's not passive.

17 There is case law that talks about the difference
18 between passive conduct and what we're describing.

19 Passive conduct would be if someone makes a post
20 and it somehow winds up in your client's account without him
21 or anybody else doing anything.

22 MR. BLANCHE: That's not our position.

23 THE COURT: No, it's not your position, which means
24 that someone had to do something.

25 MR. BLANCHE: Yes.

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1 THE COURT: Okay. So calling it a repost and
2 suggesting that because somebody else wrote it and then
3 miraculously it appears in your client's account that,
4 therefore, your client can wash his hands of it?

5 You said it's just common sense. I say it's just
6 common sense.

7 MR. BLANCHE: It's not. Judge, we are not
8 saying -- I'm not asking that President Trump wash his hands
9 of it, the question is whether it's a violation.

10 If it's unambiguously a willful violation of the
11 Gag Order to take a news article that appears in whatever
12 publication it's from and post it, as opposed to using your
13 own words.

14 THE COURT: So it's your client's position that
15 when he was reposting these things, he was not violating the
16 Gag Order?

17 MR. BLANCHE: Correct.

18 THE COURT: So how do I know that that's his
19 position, because you are telling me?

20 MR. BLANCHE: Well, your Honor, I think that --

21 THE COURT: Are you testifying under oath that
22 that's his position?

23 MR. BLANCHE: Your Honor, I'm not testifying under
24 oath, I'm making argument, your Honor.

25 THE COURT: Well, you know, it's your client's

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1 position that at the time that he reposted anything to one
2 of his accounts, he did not believe that he was violating
3 the Gag Order?

4 I would like to hear that.

5 MR. BLANCHE: Your Honor --

6 THE COURT: I would like to hear that.

7 Or do you want me to accept it just because you're
8 saying it?

9 MR. BLANCHE: No, I don't expect you to accept it
10 because I'm just saying that.

11 But what I would like you to look at here, your
12 Honor, is that there is a history of posting and reposting
13 that have gone unchecked.

14 And I agree with you that the People have a right
15 to choose when they want to and when they don't want to
16 bring an Order to Show Cause, but that certainly goes to
17 whether the Court can find that it's willful, the fact that
18 President Trump hasn't done it --

19 THE COURT: I just want to make you aware that the
20 People presented 10 exhibits. They indicated what their
21 case law is.

22 I understand what your position is.

23 The People have presented that case law; you have
24 no obligation, of course, but you have presented nothing.

25 MR. BLANCHE: No, your Honor, we are in the middle

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1 of a criminal trial and you are asking whether I should put
2 President Trump on the stand; is that the question?

3 THE COURT: Well, I'm just telling you that you
4 have presented nothing.

5 I have asked you 8 or 9 times, show me the exact
6 posts that he was responding to, and you have been unable to
7 do that even once.

8 Let me ask you about Exhibit 10.

9 (Pause.)

10 *****

11 THE COURT: So this is Exhibit 10.

12 It was posted on April 17th at 5:46 p.m.

13 And it says, in quotes, "They are catching
14 undercover liberal activists lying to the Judge in order to
15 get on the Trump jury." Closed quote.

16 And then it's attributed to Jesse Waters.

17 Is that, in fact, what Mr. Waters said?

18 MR. BLANCHE: He said, "They are catching
19 undercover liberal activists lying to the Judge."

20 And then not -- at the time, I don't believe he
21 said "in order to get on the Trump jury."

22 THE COURT: Well, at the time that he reposted
23 this, he had not said that?

24 MR. BLANCHE: Correct.

25 THE COURT: So your client manipulated what was

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1 said and put it in quotes; am I right?

2 MR. BLANCHE: It was, I wouldn't use the word
3 manipulation, your Honor, but the rest of the quote is not
4 part of the quote.

5 THE COURT: Okay. My other question is, this is
6 not a repost at all?

7 MR. BLANCHE: No.

8 THE COURT: No. This is something that was said on
9 TV and your client had to type it out.

10 He had to sit there, use the quotation marks, the
11 shift key and type everything out, and then add those
12 additional words.

13 So your argument that these are reposts and,
14 therefore, they are not a violation, that does not apply to
15 Exhibit Number 10; is it?

16 MR. BLANCHE: Number 10 is not a repost, agreed.

17 THE COURT: So what is your argument as to
18 Exhibit 10?

19 MR. BLANCHE: Judge, the argument as to Exhibit 10,
20 it's ambiguous whether this statement violates the Gag
21 Order.

22 Again, we have to find a willful violation of the
23 Gag Order beyond a reasonable doubt.

24 And President Trump voicing his view that there
25 were liberal activists trying to get on this jury is not

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1 calling on a particular juror.

2 It's not in any way trying to threaten or
3 intimidate jurors. It just isn't, your Honor.

4 I mean, and there is not -- it's tough to read,
5 especially because that night, your Honor, I mean, remember
6 we are talking about what's in Truth, but on every single
7 website that was in news form and in every single newspaper
8 article, on CNN, on all the cable shows, there was full
9 discussions about the jury. Full discussions.

10 And I'm not saying that that's exactly like what
11 was said, but there is full discussions about the jury, so
12 it wasn't in President Trump's Truth.

13 THE COURT: Mr. Bove, do you want to speak to
14 Mr. Blanche?

15 MR. BOVE: Yes, your Honor. Thank you.

16 (Defense counsel confer.)

17 *****

18 MR. BOVE: Thank you.

19 MR. BLANCHE: Thank you.

20 I'm looking, your Honor, and I'm happy to bring it
21 up to the Court and share it with the District Attorney, I
22 don't have a printed copy, but I can get one.

23 THE COURT: That's fine. Just let me know what it
24 is.

25 MR. BLANCHE: Just to say what it is, it's a post

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1 from Jesse Waters from April 17th.

2 It appears I'm looking at one that said, 8:24 p.m.,
3 And it says, verbatim, the same thing that President Trump
4 said on his Truth.

5 THE COURT: But that's three hours after your
6 client's post.

7 MR. BLANCHE: Yes.

8 THE COURT: So it's irrelevant to that.

9 MR. BLANCHE: Well, it goes to --

10 THE COURT: There is no relevance to that.

11 Do you have any case law that you want to hand up,
12 any other arguments that you want to make to me at this
13 time?

14 MR. BLANCHE: Yes.

15 Again, your Honor, we said it in our papers, but
16 now that we've had this hearing, it's worth ending on this
17 point, which is that this Gag Order, we are trying to comply
18 with it.

19 And there is no doubt that we are here about 10
20 different purported violations.

21 President Trump is being very careful to comply
22 with your Honor's rules.

23 And --

24 THE COURT: You, Mr. Blanche, you are losing all
25 credibility. I have to tell you that right now. You are

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1 losing all credibility with the Court.

2 Is there any other argument that you want to make?

3 MR. BLANCHE: Yes, your Honor.

4 If anything, the reposts and whether something can
5 be reposted, an article written by a reporter can be
6 reposted, and that is a violation of the Gag Order, that's
7 ambiguous and that's something that we certainly were not
8 aware of.

9 We don't read the Gag Order that way, and if that's
10 the way that it's going to be enforced, we will take down
11 the posts. Of course, we will.

12 And if we are directed to take down all of these
13 posts, of course, we will comply.

14 When you are thinking about criminal contempt and a
15 willful violation beyond a reasonable doubt, it's important
16 to look at, first of all, the first three posts that were
17 the subject of the first Order to Show Cause, which have
18 nothing to do with those witness's testimony in this
19 courtroom.

20 And the reposts of articles that have been going
21 on, you know, for weeks, if that's a violation of the Gag
22 Order, we didn't read it that way.

23 And we will implement that and make sure that that
24 doesn't happen.

25 But certainly for all of the reasons that we've

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1 talked about, the President should not be held in contempt.
2 If anything, the Court should make crystal clear what it
3 means with the reposts.

4 And to the extent that your Honor views the posts
5 about Mr. Cohen and the system as being too close to the
6 line, tell President Trump, tell me, and we will make sure
7 that it's not violated.

8 THE COURT: As far as the whole distinction between
9 reposts, you have stated it's ambiguous, you stated you
10 didn't know, but again I hate to come back to this, but you
11 are not offering me anything to support your argument.

12 MR. BLANCHE: But, your Honor --

13 THE COURT: I was not done.

14 You are not giving me anything to hang my hat on to
15 say, yeah, you're right, the reposts, that was unambiguous,
16 but as I've heard before, suppose someone outside has a
17 placard, right, someone outside is walking around with a
18 placard and it says some horrible, horrible things, is it
19 your position that if your client were to grab that placard
20 and walk around with it and it said terrible, terrible
21 things about the jury, that he has done nothing wrong
22 because he didn't write that post or he didn't write that
23 placard, therefore, he's absolved from any blame?

24 Is that what you're saying?

25 MR. BLANCHE: It is nothing like what I'm saying,

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1 your Honor.

2 I'm saying this is a news article, that's different
3 than a guy walking around with a placard.

4 And you said I offered no evidence, no argument to
5 give your Honor comfort about the case law.

6 This has never happened before. There isn't case
7 law.

8 But here is what we did offer and it matters, your
9 Honor, there had been reposts so we, of course, are trying
10 to not willfully violate the Court's orders, okay, there are
11 reposts that would appear to be similar to the ones that we
12 are talking about today, and the People did not -- we are
13 not here because of those.

14 And I agree with you, they have a choice, they can
15 bring whatever they want, but that certainly goes to the
16 willfulness.

17 THE COURT: All right. Look, if it's your position
18 that there were reposts and the Court didn't act on it and
19 the People didn't act on it, you are absolutely right, but
20 if it's your position that because of that, that somehow
21 that's probative of anything, we are just going to have to
22 disagree about that.

23 The fact that the People did not come running in
24 here immediately when your client started reposting things
25 or that the Court did not decide to summarily find your

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1 client in contempt, a decision that probably would have been
2 overturned on appeal, is not probative of anything.

3 You said, you know, maybe we've gotten too close to
4 the line, I think what you should have done is probably
5 said, you know, my client is thinking of reposting some
6 things, it's not really clear to us in the Gag Order whether
7 that's allowed; Judge Merchan, is that allowed?

8 But that's not what you did.

9 MR. BLANCHE: Look, your Honor --

10 THE COURT: So let's take our break.

11 I'm going to reserve decision on this.

12 And we will reconvene at 11 o'clock.

13 I'm sorry, you wanted to say something?

14 MR. CONROY: Judge, if I may be heard just very
15 briefly, Judge.

16 First of all, and this is obvious, Michael Cohen
17 and Stormy Daniels are not defendants in a criminal case,
18 Mr. Trump is.

19 He knows exactly what he's doing.

20 Judge, I would like to just hand up one more Truth
21 and if you could hand a copy to counsel as well, that would
22 be great.

23 (Handed.)

24 *****

25 MR. CONROY: And I think, Judge, the import of this

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1 is just that it illustrates what the defendant thinks about
2 what happens when he posts something on Truth.

3 It's a 2-page post.

4 I'm just going to read it. It's from April 4th,
5 2024.

6 One page -- it appears one page of the post is
7 about an hour earlier than the other on that day.

8 But he's talking about his company Truth Social
9 and he says: "But when I put out a statement or message" --
10 and I'm not sure what the distinction is in his mind -- "it
11 is spread all over the place, fast and furious. Everybody
12 seems to get whatever I have to say and quickly."

13 So that's what we know about what the defendant
14 thinks of his use of Truth Social.

15 Judge, there is a lawful order here. It's very
16 clear.

17 The defendant has violated it willfully and
18 knowingly by posting these posts. And we are asking the
19 Court to hold him in contempt.

20 MR. BLANCHE: Quick scheduling question, Judge.

21 THE COURT: Yes.

22 MR. BLANCHE: We are going to take a break until
23 11.

24 Is it the Court's intention to go from 11 to 2
25 straight?

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1 THE COURT: Yes. Yes, it is.

2 MR. BLANCHE: All right.

3 THE COURT: All right. Thank you. See you later.
4 All right.

5 I'm sorry, before you step out, I did receive your
6 separate submission regarding the proposed limiting
7 instruction as to the Wall Street Journal articles, and the
8 limiting instruction regarding AMI.

9 The AMI limiting instruction that I came up with is
10 really just a combination of the two; I took some from one
11 and I took some from the other.

12 The limiting instructions to the Wall Street
13 Journal article, I basically adopted the defendant's version
14 of that.

15 I will -- I have made copies, and I will hand down
16 copies when I come back at 11.

17 Thank you.

18 MR. CONROY: Judge, one other thing, I said I would
19 hand up a case. And I have a copy for the Court and I have
20 a copy for counsel.

21 Thank you.

22 THE COURT: Thank you.

23 (Recess taken.)

24 *****

25 THE CLERK: Case on trial continues.

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1 Appearances, please, starting with the People.

2 MR. STEINGLASS: For the People, ADA's Joshua
3 Steinglass, Susan Hoffinger, Matthew Colangelo, Christopher
4 Conroy, Becky Mangold and Katherine Ellis.

5 Good morning.

6 MR. BLANCHE: Good morning, your Honor.

7 Emil Bove for President Trump, who is seated to my
8 left.

9 And I am joined at counsel table by Todd Blanche,
10 Susan Necheles and Kendra Wharton.

11 THE COURT: Okay. Good morning, again.

12 I am handing down copies of the two limiting
13 instructions, and it's two copies for each side.

14 (Handed.)

15 *****

16 MR. BOVE: Just one point of clarification, Judge,
17 with respect to the limiting instruction regarding the Wall
18 Street Journal news articles.

19 The defense has asked that that instruction also be
20 provided when the People offer exhibits relating to articles
21 from the National Enquirer.

22 And I think those are marked as the People's 152
23 and 153-A series.

24 And I just --

25 THE COURT: There may be an appropriate instruction

1 that needs to be given at that time.

2 The People have indicated that they might be
3 offered for something other than what that says, so we will
4 just need to customize it.

5 MR. BOVE: And I guess then the question is, are
6 they coming in today?

7 And how should we address that in the flow of the
8 presentation?

9 MR. STEINGLASS: Do you want me to answer that?

10 THE COURT: Sure.

11 MR. STEINGLASS: I believe we will get to them
12 today, but I think we had extensive colloquy on this matter
13 last Monday when we argued why they should be admissible.

14 And there is a host of reasons why they should be
15 admissible.

16 And this kind of gets to the point that we made in
17 our response last night, which is that, you know, the
18 defendant is really not entitled to seriatim limiting
19 instructions every time we introduce a piece of evidence.

20 I don't think there is any law that requires that
21 to be the case.

22 I don't think they provided any law; the case that
23 they provided doesn't stand for that proposition.

24 And so I think that we can tinker with the,
25 whatever limiting instructions are appropriate at the time

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1 that the Court gives them, which in our view ought to be
2 when the Court gives all of its limiting instructions.

3 THE COURT: And I think we will give instructions
4 that will ensure that the jurors are not confused, and if
5 that's at the time that it comes in or at the end of the
6 trial or more than that, we will just figure it out as we go
7 along, but certainly we want to ensure that no juror is
8 confused.

9 MR. BOVE: Thank you, Judge.

10 THE COURT: When the jury comes out, I do want to
11 take a minute to just kind of clarify next week's schedule.
12 I misspoke about a couple of things and I just want to
13 correct that.

14 THE COURT OFFICER: Witness entering.

15 (The witness, David Pecker, enters the courtroom
16 and resumed the witness stand.)

17 *****

18 THE COURT OFFICER: Step this way, sir. Step to
19 the officer.

20 THE WITNESS: Okay.

21 THE COURT: Welcome back, Mr. Pecker. I remind
22 you, sir, that you are still under oath.

23 THE WITNESS: Yes.

24 THE COURT: You can get the jury, please.

25 THE COURT OFFICER: All rise. Jury entering.

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1 (Jury enters.)

2 *****

3 THE COURT: Please be seated.

4 THE CLERK: The jury is present and properly
5 seated.

6 THE COURT: Good morning, jurors.

7 Welcome back.

8 Jurors, before we continue with the testimony of
9 Mr. Pecker, I just wanted to clarify our schedule for next
10 week.

11 I misspoke yesterday regarding Monday and Tuesday
12 of next week.

13 Next Monday we are not meeting at all. There will
14 be no work.

15 Tuesday, we will be working all day. All right.

16 MR. STEINGLASS: Thank you.

17 *****

18 DIRECT EXAMINATION (Continued.)

19 BY MR. STEINGLASS:

20 Q Good morning, Mr. Pecker.

21 A Good morning.

22 Q When we broke yesterday we were talking about Bonnie
23 Fuller.

24 And let me just ask you very briefly, during the period from
25 2015 to 2017, what was her title?

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1 A Executive editor of Star Magazine.

2 Q Are you also familiar with someone named Trish
3 McAndrews?

4 A The name is familiar, but I don't recall.

5 Q How about just Trish?

6 A Trish, yes. Trish was my assistant.

7 Q You don't remember your assistant's last name,
8 Mr. Pecker? That's not going to go over very well.

9 A Well, I always called her Trish for a number of years,
10 very rarely saw her last name.

11 Q Okay. So during the period from 2015 to 2017, was she
12 your assistant?

13 A Yes.

14 Q Okay. Are you personally familiar with Donald J.
15 Trump?

16 A Yes.

17 Q For how long have you known him?

18 A Since the late 80s.

19 Q Do you see him today in the courtroom?

20 A Yes, I do.

21 Q Would you please point him out and would you please
22 tell us something that he's wearing?

23 A He's sitting here. He is wearing, I think it's a dark
24 blue suit.

25 (Witness indicating.)

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1 *****

2 THE COURT: Indicating Mr. Trump.

3 MR. STEINGLASS: Thank you, Judge.

4 Q How did you meet the defendant?

5 A I met the -- I met Mr. Trump at Mar-a-Lago. A client
6 of mine, Ronald Perelman, introduced me to a fellow by the name
7 of Nick Ribis. This is all at Mar-a-Lago.

8 And he invited -- Nick invited me to Mar-a-Lago, and he
9 introduced me to Mr. Trump.

10 And Nick was the, at that time, if I recollect, he was the
11 President of Resorts Casinos, one of Mr. Trump's hotels and
12 casinos.

13 Q And do you remember about when that was?

14 A I think, I would say that would be in the 80s, '88 or
15 '89.

16 Q Can you describe your relationship with Mr. Trump over
17 the years for the jury?

18 A Yes. I have had a great relationship with Mr. Trump
19 over the years, starting in the -- when, starting in '89, I had
20 an idea of creating a magazine called Trump Style, and I
21 presented it to Mr. Trump.

22 And he liked the idea a lot, and just questioned me who was
23 going to pay for it, because magazines are pretty expensive.

24 So I told him, I said, Mr. Trump, you have all of these
25 hotels, all of these casinos, all of these apartments, you

1 basically have a fixed distribution.

2 So he liked the idea, and we went ahead and launched the
3 magazine on a quarterly basis.

4 And I would see Mr. Trump probably once a quarter at that
5 time to get the cover approved and the content approved.

6 Q So you did, in fact, launch Trump Style magazine?

7 A Yes.

8 Q Did your relationship with Mr. Trump change at all
9 after you acquired the National Enquirer?

10 A Yes. Well, I should say that over the years, from '89
11 to when I acquired the National Enquirer in March of '99, over
12 those 10 years I had a -- I was responsible for -- I was the
13 President of a French publishing company.

14 And I had a lot of dealings and discussions with Mr. Trump
15 because as the, as a celebrity in his own right at that time he
16 was very helpful in introducing me to other executives and other
17 people in New York.

18 And he would always advise me of parties or events or things
19 that I would either go to or send, at that time, my editors to,
20 that was prior to the National Enquirer.

21 And then when I bought the National Enquirer in March of
22 1999, one of the first calls that I received was from Mr. Trump.

23 He called me and he says, congratulations, he says, you
24 bought a great magazine.

25 And he knew over the years the Editor-in-Chief and a few of

1 the editors at the National Enquirer.

2 Q Now, are you familiar with the show The Apprentice?

3 A Yes.

4 Q Can you very briefly describe that for the jury?

5 A Mr. Trump and Mark Burnett launched The Apprentice show
6 on NBC.

7 It was an instant success.

8 And I had -- this was in 2000, I had a number of
9 conversations with Mr. Trump about The Apprentice, what the
10 ratings were, and how it was doing.

11 And he was always kind enough to send me the content, show
12 the ratings and I was able to publish that in the National
13 Enquirer and some of the other magazines and I received all that
14 content.

15 Obviously, I didn't have to pay for it.

16 And it was a great mutual, beneficial relationship because
17 all of the press about the show and how it was doing was all
18 published also along that time.

19 Then in 2003 or 2004, when Mr. Trump launched The Celebrity
20 Apprentice, then our relationship even started to grow even
21 further because the celebrities that he was firing on the show
22 and the amount of press that the show received and the
23 incredible ratings that it had and what I believed it did for
24 Mr. Trump as a national figure on TV as The Boss did a
25 tremendous--also help for my magazines, because they, the

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1 audience of the National Enquirer and the other celebrity
2 magazines loved Mr. Trump as a major celebrity and followed it,
3 followed him religiously, I should say.

4 Then I would add on that all of the -- a lot of content on
5 the show, whether somebody was going to be fired or terminated
6 or there was some controversy he would have, as the publisher,
7 Mr. Trump was kind enough to give me the information first; so
8 it was very beneficial for my magazines. And that ran from 2004
9 to 2014.

10 Q And just to put that in a little bit of context, I'm
11 not sure you said this, but did The Apprentice show involve
12 several contestants that were competing to be hired by
13 Mr. Trump?

14 A Yes.

15 Q But even though they hadn't been hired, as people were
16 eliminated as the show went on, he would say "You are fired,"
17 and they would basically be eliminated from the show; is that
18 correct?

19 A Yes.

20 Q Now, did there come a point during the relationship and
21 the way it evolved that you just described that you came to
22 consider Mr. Trump a friend?

23 A Yes, I did.

24 Q And during the period from 2015 to 2017, did you
25 consider Mr. Trump a friend?

1 A Yes, I did.

2 Q When you spoke with Mr. Trump, what did you call him?

3 A I would call him Donald.

4 Q Prior to 2015, how often would you say you spoke to
5 Mr. Trump?

6 A Maybe monthly or quarterly I would speak to Mr. Trump
7 or if there was an event that came up, if he fired somebody on
8 The Celebrity Apprentice and it was something that was going to
9 get a lot of national news, I would speak to him more often.

10 Q And how often would you see him during the period from
11 say 2015 to 2017?

12 How often would you see him in person?

13 A Oh, I would say I would see him maybe either once a
14 month or once or twice a quarter.

15 Q Okay. And did that change at some point in 2015?

16 A Yes. After Mr. Trump announced his president -- after
17 he announced his run for president, I, I saw Mr. Trump more
18 frequently, maybe once a month.

19 Q Did you also communicate with Mr. Trump by telephone?

20 A Yes.

21 Q And how often did you do that?

22 A Maybe once every couple of weeks.

23 Q When you spoke to him, did you speak to him -- did you
24 call him on a cell phone, a landline or something else?

25 A I would call his office and I would speak to his

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1 assistant, who would transfer me to Mr. Trump, or if he called
2 me, he would call me in my office.

3 Q And did you ever speak to him on your cell phone?

4 A Yes, but very infrequently.

5 Q Did you ever speak to him on his cell phone?

6 A I did, but also very infrequently.

7 Q So mostly it was reach each other through your offices?

8 A That's correct.

9 Q Now, you said that when, sometimes when you would call
10 the office and you would speak to his assistant, can you give
11 her us name?

12 A Yes, Rhona Graff.

13 Q And is that his assistant at the Trump Organization?

14 A Yes, at the Trump Organization, Mr. Trump's assistant.

15 Q Did you ever communicate with Mr. Trump through his
16 bodyguard?

17 A Yes. I have.

18 Q Do you remember his bodyguard's name?

19 A Keith Schiller.

20 Q And was that something that you did frequently or
21 infrequently?

22 A Infrequently.

23 Q Did Mr. Trump ever call you from Mr. Schiller's phone?

24 A I believe I spoke to him on Mr. Schiller's phone maybe
25 one time.

1 Q Okay. And were there instances where Mr. Schiller
2 would pass messages on to you from Mr. Trump?

3 A Yes, but also infrequently.

4 Q Okay. Did you have occasion over the years to observe
5 Mr. Trump's business practices?

6 A Yes.

7 Q In what context?

8 A I was -- I had a meeting with Mr. Trump in his office,
9 and when I was there his assistant Rhona brought in a batch of
10 invoices and checks to sign.

11 And I observed Mr. Trump, he asked me, while he was
12 reviewing the accounts payable packages, he -- we were talking
13 at the same time, and I noticed that he reviewed the invoice and
14 looked at the check and then he would -- he was signing them.

15 Q So on the occasion that you or the occasions that you
16 noticed that, did you, could you tell whether the check was
17 stapled to the invoice or just somehow attached to it?

18 A I, as I recollect, the entire package was stapled
19 together.

20 Q And so you observed him reviewing what looked like an
21 invoice and signing what looked like a check?

22 A That is correct.

23 Q How would you describe -- withdrawn.

24 Did you visit Mr. Trump at Trump Tower on multiple
25 occasions?

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1 A Over the years?

2 Q Over the years.

3 A Yes.

4 Q How would you describe him as a businessman?

5 A I would describe Mr. Trump as very knowledgeable.

6 I would describe him as very detail oriented.

7 I would describe him as an, almost as a micromanager from

8 what I saw, that he looked at every, all of the aspects of

9 whatever the issue was.

10 Q How about his approach to money?

11 A I thought that his approach to money, he was very

12 cautious and very frugal.

13 Q Are you familiar with someone named Michael Cohen?

14 A Yes, I am.

15 Q Who is Michael Cohen?

16 A Michael Cohen was Donald Trump's personal attorney.

17 Q Do you remember when and where you met Michael Cohen?

18 A I met Michael Cohen at a Bar Mitzvah in early 2000.

19 Q And how did you meet him?

20 A Oh, one of the vendors of our company invited me and my

21 wife to his son's Bar Mitzvah, and this fellow, it was -- he

22 introduced me to Michael Cohen.

23 Q Got it.

24 Did there also -- did there ever come a time when Mr. Trump

25 also introduced you to Michael Cohen?

1 A Yes, in -- I was in Mr. Trump's office and he
2 introduced me to Michael Cohen.

3 It was in 2007.

4 And what he said to me was, he said that he, he hired
5 Michael Cohen.

6 He lives in one of his condominiums, that he has done a lot
7 of great things for him, and all of the contacts that I had with
8 Mr. Trump, that now my contacts should go through Michael Cohen
9 and anything that I came up and told Mr. Trump about, if there
10 were any rumors in the marketplace about Mr. Trump or his family
11 or any negative stories that were coming out or anything that I
12 heard overall that I would go through -- I would call Michael
13 Cohen directly.

14 Q And that was back in 2007?

15 A Yes.

16 Q So was that before or after the Bar Mitzvah where you
17 had first met Michael Cohen?

18 A Oh, seven years after.

19 Q Okay. So you had met him once before, but now
20 Mr. Trump kind of told you he had hired him and told you about
21 hiring him?

22 A Yes. I was surprised that I knew him before.

23 Q During the period -- withdrawn.

24 Were you aware of what Michael Cohen's title was vis-a-vie
25 Mr. Trump?

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1 A I knew when Mr. Trump introduced Michael Cohen to me
2 that it was his personal lawyer. That was the only title that I
3 knew.

4 Q Okay. So during the period from 2015 to 2017, I'm
5 obviously going to keep coming back to that period, was Michael
6 Cohen still in that role as a personal attorney to Mr. Trump?

7 A Yes.

8 Q During that period, again, from 2015 to 2017, how
9 frequently would you meet with Michael Cohen?

10 A I would speak to Michael Cohen probably if I had
11 something to call him about or I heard something, I had
12 something to discuss, probably maybe once a month, twice a
13 quarter.

14 And then if there was an issue or something that he wanted
15 to follow up on or I advised him of something and we were
16 working on it, I would speak to him more frequently.

17 Q After, I think you mentioned earlier that at some point
18 in 20 -- we will come back to this later, that at some point in
19 2015 you told us that Mr. Trump announced his candidacy for
20 president?

21 A That's correct.

22 Q Did your -- did the frequency of contact that you had
23 with Michael Cohen increase, decrease or stay the same after
24 Mr. Trump announced his candidacy?

25 A Increased.

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1 Q So after that presidential announcement, how often
2 would you say that you had contact with Michael Cohen?

3 A I would say a minimum of every week, and if there was
4 an issue it could be daily.

5 Q Do you know somebody named Hope Hicks?

6 A Yes, I do.

7 Q Who is Hope Hicks?

8 A Hope Hicks was the communication director for
9 Mr. Trump.

10 I knew Hope Hicks also when she worked for Ivanka, for her
11 beauty -- first for her fashion business.

12 And then Hope Hicks worked for the communication company
13 that I had at American Media called, the company was called
14 Hiltzik Strategies.

15 And Hope worked for them and worked for, his name was
16 Matthew Hiltzik, and Hope was assigned to work for Star
17 Magazine.

18 Q Now, did there come a point after Mr. Trump announced
19 his candidacy that Hope Hicks became the communications director
20 of the campaign?

21 A Yes.

22 Q Now, you mentioned in your previous answer the name
23 Ivanka.

24 For the record, are you referring to Ivanka Trump?

25 A I am, yes. Ivanka Trump, Mr. Trump's daughter;

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1 correct.

2 Q Thank you. I am just making the record clear.

3 A Yes.

4 Q So directing your attention to early 2015, did you ever
5 speak with the defendant about his interest in running for
6 president?

7 A Yes, I did.

8 Q And tell the jury, can you tell the jury a little bit
9 about that?

10 A Yes. As I mentioned a little earlier, when Mr. Trump
11 launched The Apprentice and then launched The Celebrity
12 Apprentice, his -- I would say the interest in Mr. Trump through
13 my magazines, basically the National Enquirer, skyrocketed.

14 We would do a lot of research to determine what would the
15 proper cover of the magazine to be, to see which celebrity would
16 sell the best.

17 And in all of the time that -- every time we did this,
18 Mr. Trump would be the top celebrity.

19 So, and some of the other pieces of the research was clear
20 that Mr. Trump was viewed as The Boss: Seeing him in the board
21 room, seeing him in the -- on each of the shows every week, he
22 was the person.

23 So I discussed with him that we did a poll in the National
24 Enquirer about Mr. Trump running for president, would he be --
25 how would the readership feel, and he -- I should say the

1 research showed that 80 percent of the readership of the
2 National Enquirer would want Mr. Trump to run for president.

3 And I passed that on, the information on to Donald Trump,
4 and shortly after he was on a -- he was being interviewed on The
5 Today Show, and Matt Lauer interviewed him with respect to his
6 aspirations of running for president.

7 And one of the comments was about, that Mr. Trump made was
8 that this poll that was just recently done at the National
9 Enquirer.

10 Q So he cited your poll to Matt Lauer as he was flirting
11 with the idea of running for president?

12 A Yes.

13 Q Do you remember when Mr. Trump announced that he was
14 running for president?

15 A It was June of 2015.

16 Q And how do you remember that?

17 A I was there at the announcement.

18 Q How did it come to be that you were there at the
19 announcement?

20 A I received an invitation from Michael Cohen.

21 Michael Cohen sent me an invitation saying that there is
22 going to be an announcement and I believe you should be there.
23 So that's why -- that's how I knew.

24 Q Okay. Thank you.

25 MR. STEINGLASS: Madame Clerk, I would like to

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1 display just for the witness, the parties, and the Court at
2 this time the next exhibit, or the first exhibit, which is
3 People's 151.

4 Bear with us while we work out this technology.

5 Q Mr. Pecker, do you see anything on your screen?

6 A Yes, I do.

7 Q Okay. Do you recognize this exhibit, People's 151?

8 A Yes, I do.

9 Q What is it?

10 A It's an email from me to Michael Cohen dated June 2nd,
11 2015, thanking him for thinking of me for his invitation.

12 And then there is an invitation from Michael Cohen to me,
13 which is the first email inviting me to the June 16th press
14 announcement at Trump Tower at 11 o'clock.

15 Q So that's the email that you were referring to?

16 A Yes.

17 MR. STEINGLASS: I will offer this into evidence.

18 MR. BOVE: No objection.

19 THE COURT: People's 151 is accepted into evidence.

20 (Marked in evidence.)

21 *****

22 Q Okay.

23 MR. STEINGLASS: Now, please display this for
24 everyone.

25 (Displayed.)

1 *****

2 MR. STEINGLASS: Thank you very much.

3 Q Okay. I'm just going to, it's a little small so I
4 think we can blow up portions of it as we need it.

5 A Can you just tell us when you got the email?

6 A June 2nd. I'm sorry, June 2nd, 2015, at 6:59 a.m.

7 Q Okay. And what was the substance of the email, you can
8 just read it to us?

9 A Oh, okay. "I hope you are well. I'm sure you have
10 seen the news about the June 16th press announcement at Trump
11 Tower at 11:00 a.m.

12 A As a friend, I would love if you could make it.

13 A Let me know so I can save you a seat next to me on the
14 atrium floor.

15 A No one deserves to be there more than you."

16 Q And how was the email signed?

17 A I'm sorry? I couldn't hear that.

18 Q I asked you how was the email signed, from whom, who
19 signed it?

20 A Oh, from Michael Cohen.

21 Q Got it. Thank you.

22 A Did you go?

23 A Yes, I went.

24 Q Tell us about it?

25 A I was there. I was with -- I went into -- I walked

1 into Trump Tower.

2 I -- Michael Cohen was in the atrium, so I found him, and
3 then I was there when Mr. Trump and Melania came down the
4 staircase and went up to the podium.

5 Q And is that when he announced his candidacy for
6 president?

7 A Yes.

8 Q Now, again, you used the name Melania in your answer.
9 Are you referring to Melania Trump?

10 A Melania Trump, yes.

11 Q And is that the defendant's wife?

12 A Yes.

13 Q Directing your attention to a couple of months later,
14 now in August of 2015, did there come a time when you attended a
15 meeting in Trump Tower?

16 A Yes.

17 Q Do you remember when roughly that meeting was in
18 August?

19 A It was the middle of August.

20 Q And who was present for that meeting?

21 A Donald Trump, Michael Cohen and Hope Hicks.

22 Q And was Hope Hicks there the whole time or was she in
23 and out?

24 A She was in and out.

25 Q How about Michael Cohen and Donald Trump, were they

1 there for the duration of the meeting?

2 A Yes.

3 Q How did the meeting come about? How did you know to
4 go?

5 A I received a call from Michael Cohen telling me that
6 The Boss wanted to see me, and that's how -- when I spoke to
7 Michael Cohen, that's how he would refer to Donald Trump as The
8 Boss.

9 Q What did you understand the purpose of the meeting to
10 be before you actually got there?

11 A I -- most of the time when I received a call from
12 Michael Cohen, he wanted something, so I assumed that they were
13 going to ask -- I was going to be asked for something.

14 I didn't know what it was before I got there.

15 Q Well, can you describe for the jury what happened at
16 that meeting, please?

17 A At that meeting, Donald Trump and Michael, they asked
18 me what can I do and what my magazines could do to help the
19 campaign.

20 So thinking about it, as I did previously, I said what I
21 would do is I would run or publish positive stories about
22 Mr. Trump and I would publish negative stories about his
23 opponents.

24 And I said that I would also be the eyes and ears of your --
25 I said I would be your eyes and ears because I know that the

1 Trump Organization had a very small staff.

2 And then I said that anything that I hear in the
3 marketplace, if I hear anything negative about yourself or if I
4 hear anything about women selling stories, I would notify
5 Michael Cohen, as I did over the last several years, I would
6 notify Michael Cohen and then he would be able to have them kill
7 in another magazine or have them not be published or somebody
8 would have to purchase them.

9 Q Purchase the negative stories about Mr. Trump so that
10 they would not get published, you mean?

11 A That they would not get published, yes.

12 Q So I want to break that down a little bit. First of
13 all, when you offered -- withdrawn.

14 So you offered to publish positive stories about Mr. Trump?

15 A Yes.

16 Q To publish negative stories about his opponents?

17 A Yes.

18 Q And to alert him through Michael Cohen when you came
19 across damaging information, particularly regarding women?

20 A Yes.

21 Q And the idea was that so Mr. Trump and Mr. Cohen could
22 prevent that information from being publicized?

23 A Yes.

24 Q So you mentioned women in particular.

25 What made you -- are you the one who raised that?

1 Did somebody else raise that?

2 Can you explain to the jury how the topic of women in
3 particular came up?

4 A Well, in a presidential campaign I was the person that
5 thought that there would be a number -- a lot of women come out
6 to try to sell their stories, because Mr. Trump was well-known
7 as the most eligible bachelor and dated the most beautiful
8 women.

9 And it was clear that based on my past experience, that when
10 someone is running for a public office like this, the -- it is
11 very common for these women to call up a magazine like the
12 National Enquirer to try to sell their stories.

13 Or I would hear it in the marketplace through other sources
14 that stories are being marketed.

15 Q Did you have or express any ideas about how you may be
16 able to help kind of deal with those stories by women?

17 A All I said was I would notify Michael Cohen.

18 Q What about Bill and Hillary Clinton, did their names up
19 during this meeting?

20 A Yes.

21 Q Can you explain how?

22 A As I mentioned earlier, my having the National
23 Enquirer, which is a weekly magazine, and you focus on the cover
24 of the magazine and who -- and who and what is the story that is
25 the topic of the week, the Hillary running for president and

1 Bill Clinton's womanizing was the biggest, one of the biggest
2 sales I had for the National Enquirer and the other tabloids,
3 that's the other things that the readers wanted to read about
4 and that's what I would sell weekly.

5 So I was running the Hillary Clinton stories.

6 I was running Hillary as an enabler for Bill Clinton, with
7 respect to all of the womanizing.

8 And I was -- it was easy for me to say that I'm going to
9 continue running those type of stories for the National
10 Enquirer.

11 Q And did you believe that that would help Mr. Trump's
12 campaign?

13 A I think it was a mutual benefit. It would help his
14 campaign; it would also help me.

15 Q Okay. I'm going to come back to that and ask you to
16 elaborate a little bit more?

17 A Okay.

18 Q But specifically for the coverage of Hillary Clinton as
19 an enabler of Bill Clinton's womanizing, that was your focus?

20 A Yes, that's what I said.

21 Q How, if at all, did Mr. Trump react to your suggestion
22 that you would continue to do that?

23 A He was pleased.

24 Q Did you discuss it at any greater length?

25 A As I recollect, he was pleased.

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1 Michael Cohen was pleased on the way I was going to handle
2 these issues.

3 And that was the basis of the conversation.

4 Q Okay. So now you started to allude to earlier that to
5 some extent this arrangement that you came to at this Trump
6 Tower meeting was mutually beneficial?

7 A Yes, that's correct.

8 Q Can you explain to the jury what you mean by that?

9 A When I'm saying mutually beneficial is in writing
10 positive stories about Mr. Trump and covering the election and
11 writing negative stories about his opponents is only going to
12 increase the newsstand sales of the National Enquirer and the
13 other tabloids.

14 So for me that was my benefit, and then in doing what -- in
15 publishing these type of stories was also going to benefit his
16 campaign.

17 So that's where I was saying that we were both mutually,
18 both parties were benefiting from it.

19 (Theresa Magnicari relieved Lisa Kramsky as the
20 official court reporter.)

21 *****

22

23

24

25

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1 Q. And so, by each of the things that you agreed to do,
2 did you believe you were doing, both helping Mr. Trump's
3 campaign and also helping sell some magazines?

4 A. Yes, I needed the help.

5 Q. So the portion of the agreement that involved
6 notifying Michael Cohen about negative stories either from women
7 or some other kind of negative story, what was the ultimate
8 objective of that component of the arrangement that you made at
9 Trump Tower?

10 A. Can you rephrase that question?

11 Q. Yes. It wasn't a good question, I will try again.
12 You said that part of the arrangement was, that you
13 would notify Trump through Michael Cohen if you came upon
14 negative stories, whether they involved women or just other
15 negative stories?

16 A. Yes.

17 Q. And what was the purpose of notifying Michael Cohen
18 when.

19

20 You came upon stories like that?

21 A. Well, as I did in the past, that would be in the past
22 eight years, when I notified Michael Cohen of a story that was a
23 negative story, he would try to vet it himself to see if the
24 story was true or not.

25 He would go to the individual publication to get the

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1 story to make sure the story wasn't published and getting
2 killed.

3 Q. Prior to that August 2015 meeting, had you ever
4 purchased a story to not print it about Mr. Trump?

5 A. No.

6 Q. Now, that part of the deal where you were going to
7 notify them so they could buy up negative information about Mr.
8 Trump, that part, did that part help the National Enquirer at
9 all. How was that going to boost sales of the National
10 Enquirer?

11 A. No, that didn't help. That is the mutual benefit
12 portion of it.

13 Q. Except that part doesn't have a mutual benefit. The
14 purpose of that component was to benefit the campaign; am I
15 understanding you right?

16 A. That is right.

17 Q. But the part about running the positive stories, that
18 was mutually beneficial?

19 A. Yes, the part about running the tabloid stories on the
20 opponents, that was mutually beneficial.

21 Q. Were any of the agreements, the agreement to print the
22 negative stories about the opponents, positive stories from
23 Trump, or the agreement to notify Michael Cohen about
24 potentially negative stories about Donald Trump, were any of
25 those agreements put into writing?

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1 A. No, they weren't put into writing. It was just an
2 agreement among friends.

3 Q. Roughly, how long would you say this meeting lasted?

4 A. Twenty to 25 minutes.

5 Q. Did you discuss this meeting with anyone afterwards?

6 A. Yes. When I went back to my office -- as a matter of
7 fact, I went immediately back to my office and I met with Dylan
8 Howard. I mentioned his name yesterday. He was the Chief
9 Content Officer of the company, and the Editor-in-Chief of the
10 National Enquirer. I described to him the meeting I just had
11 with Mr. Trump and Michael Cohen, and I described to him that
12 this concept and agreement that I made has to be highly, highly
13 confidential.

14 So what I asked him to do was, I said -- I asked him to
15 notify the West Coast Bureau Chief of the National Enquirer, his
16 name was Jerry George, and I asked him to notify the East Coast
17 Bureau Chief of the National Enquirer, his name is Barry Levine,
18 and I said that any stories that are out there that are
19 commenting about Donald Trump, commenting about his family,
20 commenting about the election, whatever it might be, I want you
21 to vet the stories, I want you to bring them to me.

22 And then I said, we'll have to speak to Michael Cohen.
23 You will call Michael Cohen, or I will call him, and we'll tell
24 him what the stories are, but I want to make sure we vet them
25 first.

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1 Q. Did you tell him why you asked him to keep this
2 arrangement secret?

3 A. Yes, I did.

4 Q. What did you tell him?

5 A. I told him that we were going to try to help the
6 campaign, and to do that, I want to keep this as quiet as
7 possible.

8 Q. Because if it came out that you were helping the
9 campaign, it would kind of undermine the whole point?

10 MR. BOVE: Objection.

11 THE COURT: Sustained.

12 Q. So let me rephrase that.

13 Why was it important to you that the arrangement be
14 kept secret?

15 A. We have several hundred people that work within the
16 company, and being a tabloid company, the leaks are probably
17 more prevalent within the organization than outside the
18 organization, and I did not want anyone else to know about this
19 agreement I had and what I wanted to do, so that's why I wanted
20 it very confidential.

21 Q. So did you follow through? Did you publish a series of
22 pro-Trump articles in the National Enquirer?

23 A. Yes.

24 Q. I am going to show you and only you -- well, the
25 attorneys, People's 152. Tell me when you see that pop up on

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1 your screen.

2 Do you see it?

3 A. Not yet, no.

4 Yes, I have it in front of me.

5 Q. Do you recognize this document, 152?

6 A. Yes.

7 Q. What is it?

8 A. These are articles and covers from the National
9 Enquirer.

10 Q. Is it a document containing several headlines?

11 A. Yes.

12 Q. For stories about then candidate Donald Trump that were
13 published in the National Enquirer between the August 2015
14 meeting and around the time of the presidential election in
15 2016?

16 A. Yes, that's correct.

17 Q. Do the headlines correspond to actual stories run in
18 the National Enquirer during that time period?

19 A. Yes, they are.

20 Q. And are the dates on the headlines accurate?

21 A. Yes.

22 Q. And, just to be clear, the exhibit is a collection of
23 headlines, not the story itself?

24 A. Yes.

25 MR. STEINGLASS: I offer them into evidence.

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1 MR. BOVE: We have no objection. We would ask for
2 a limiting instruction.

3 THE COURT: Jurors, the Court is accepting
4 People's 152 into evidence. The exhibit is being admitted
5 for the limited purpose of demonstrating that the articles
6 were published, and the headlines were published, and the
7 dates they were published.

8 Also, to put them into context, to put the rest of
9 the presentation in context.

10 The exhibit is not in evidence for any other
11 purpose.

12 MR. STEINGLASS: Thank you.

13 (Whereupon, People's Exhibit 152 was received into
14 evidence.)

15 MR. STEINGLASS: Okay. Now, may we please display
16 that to everyone.

17 (Whereupon, an exhibit is shown on screen.)

18 Q. People's 152, this is a series of headlines praising
19 Mr. Trump? That was a question.

20 A. Pardon me.

21 Q. That's okay.

22 The question was: Are these a series of articles,
23 headlines praising Mr. Trump?

24 A. Yes, I was just reading them.

25 Q. Did each of these headlines correspond to stories that

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1 you ran in the National Enquirer?

2 A. Yes.

3 Q. And running these stories in the National Enquirer, was
4 that in fulfilment of the arrangement that you struck, or part
5 of the arrangement that you struck at the Trump Tower meeting in
6 August 2015?

7 A. Yes.

8 Q. All right.

9 You also mentioned that another component of that
10 arrangement with Donald Trump and Michael Cohen involved
11 publishing negative stories about Trump's opponents; is that
12 fair to say?

13 A. That's correct.

14 MR. STEINGLASS: If we can go back to just showing
15 the witness and the attorneys and the Court.

16 Q. I am going to show you People's 153A, B and C. Do you
17 see those?

18 A. Yes.

19 Q. By the way, Mr. Pecker, have you had a chance to review
20 each of these exhibits prior to today, you are not seeing them
21 for the first time?

22 A. Yes, I did.

23 Q. What are these exhibits; 153A, B and C, in most general
24 terms?

25 A. These are negative articles and cover headlines or

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1 images that we published on Mr. Trump's opponents.

2 I would like to say one other thing, if I can.

3 Q. Sure.

4 A. My conversations with Michael Cohen, Michael Cohen
5 would call me and say -- he would say, we would like for you to
6 run a negative article on, let's say, for argument sake, on Ted
7 Cruz. Then he would send me -- he being Michael Cohen -- would
8 send me information about Ted Cruz or about Ben Carson or about
9 Marco Rubio. That was the basis of our story, and then we would
10 embellish it from there.

11 Q. "We," meaning?

12 A. The National Enquirer. The National Enquirer. I would
13 speak to Dylan. He would hear the story. They would start
14 putting together the pieces of it, the photos, what makes
15 sense, how we would try to do it, how the editorial would be
16 executed. It was a process we were trying to explain, not just
17 coming up with the headline.

18 Q. Thank you for clarifying that.

19 Let me ask you, as part of your answer just now you
20 said that Michael Cohen would call you periodically and say,
21 "We would like you to run a negative story about this political
22 opponent or that political opponent;" is that correct?

23 A. Yes.

24 Q. Who did you understand "we" to be referring to?

25 A. Michael Cohen always told me he was not part of the

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1 campaign, so I only assumed that he was talking to Mr. Trump.

2 Q. To or about?

3 A. When I say "we?"

4 Q. Right.

5 A. Michael Cohen wasn't part of the campaign. When he
6 said "we," I thought he was talking about himself and Mr. Trump.

7 Q. Now, what did you understand Michael Cohen's
8 relationship to the campaign to be?

9 A. He always told me he was not part of the campaign.

10 Q. He did not work for the campaign?

11 A. He told me he wasn't part of the campaign. He didn't
12 work for the campaign. He was on the outside. He kept on
13 saying he was Mr. Trump's personal attorney and that he is a
14 lawyer and he didn't have any issues. He said there was no
15 issues with him with the campaign.

16 Q. And what did you understand, if anything, his
17 relationship to the campaign to be, I don't mean formal?

18 Let me put it this way, did you understand there to
19 be an informal relationship between Mr. Cohen and the campaign?

20 MR. BOVE: Objection.

21 THE COURT: Sustained.

22 Q. What did you understand the relationship to be between
23 Mr. Cohen and the campaign?

24 MR. BOVE: Objection.

25 THE COURT: Overruled.

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1 You can answer.

2 Q. What did you understand the relationship between
3 Michael Cohen and the campaign to be?

4 A. I thought that -- I am going to say it the best way I
5 can. Michael was physically there in every aspect of whatever
6 the campaign was working on, at least at the Trump Organization,
7 at the Trump Tower. He was physically there where the offices
8 were.

9 I thought, probably, he would have heard things. He
10 wasn't part of the campaign, but I think he may have heard
11 things informally, or he injected himself into it. He said it
12 was informal, that's what I thought because he said he wasn't
13 part of the campaign.

14 Q. When you say "he injected himself into it," what do you
15 mean?

16 A. If there were issues. For example, let's say that --
17 let's go back to Ted Cruz as an example. So he is physically in
18 that environment, and if he heard -- I don't know if he heard it
19 from Mr. Trump or if he heard it from another person within the
20 campaign or someone else, that there are issues about Ted Cruz
21 and we want this negative article to be written, I would only
22 work with Michael, so I don't know who else he spoke to. That's
23 what I was trying to say.

24 Q. Okay.

25 When you used the phrase "inject himself into it," is

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1 it the campaign?

2 A. Yes.

3 Q. So back to Exhibits 153A, B and C.

4 My question is: Do these documents contain different
5 headlines for stories about various opponents that Trump was
6 facing in the various primaries that were published in the
7 National Enquirer in the months following your August 2015
8 meeting with Mr. Trump and Michael Cohen?

9 A. That's correct.

10 Q. And do the headlines correspond to actual stories run
11 in the National Enquirer during that time period?

12 A. Yes.

13 Q. And are the dates contained under each of those
14 headlines accurate?

15 A. Yes, they are.

16 MR. STEINGLASS: I offer them into evidence.

17 MR. BOVE: No objection, subject to the same
18 limiting instruction.

19 THE COURT: People's Exhibits 153A, B and C are
20 accepted into evidence with the same caveat.

21 At this time they're being admitted for the
22 limited purpose of demonstrating that the article was
23 published on or about a certain date, and to provide
24 context for the other exhibit. The exhibit is not in
25 evidence for the truth of the matters asserted.

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1 (Whereupon, People's Exhibits 153A, B and C were
2 received into evidence.)

3 Q. Okay. I would like to now show everyone People's 153A.
4 To which candidate does 153A pertain?

5 A. Dr. Ben Carson.

6 Q. Were these articles published towards the end of 2015?

7 A. Yes.

8 Q. Had Ben Carson been gaining popularity in the polls at
9 that time?

10 A. Yes, he had.

11 Q. And were these headlines run in accordance with your
12 agreement that you had struck at Trump Tower in August of 2015
13 with Mr. Trump and Michael Cohen?

14 A. Yes.

15 Q. I'm going to show you 153B, and ask you, to whom does
16 this series of headlines pertain?

17 A. Ted Cruz.

18 Q. I am going to show you a few in particular.

19 I am displaying the first exhibit on Page 1. Does the headline
20 say "Ted Cruz Shamed by Porn Star?"

21 A. That's correct.

22 Q. And did you run an article with that headline in the
23 National Enquirer?

24 A. Yes.

25 Q. Is there any story behind that one?

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1 A. I would like to clarify, just so it's clear, that when
2 we were preparing an article, let's say for Ted Cruz, we
3 communicated what we were doing and the direction of the article
4 with Michael Cohen.

5 We would also send him the PDF's of the stories before
6 it was published so he could see what direction they were going,
7 that we were moving to, and he would comment on them.

8 So we would add content based on the information, some
9 of the information that Michael Cohen had.

10 Q. Did he ever tell you whether he had shared these
11 headlines with "The Boss" prior to their publication?

12 A. I don't recollect that, no.

13 Q. Now, did any -- withdrawn.

14 Did there come a time when candidate Trump -- then
15 candidate Trump introduced you to Stephen Bannon?

16 A. Yes.

17 Q. I am getting ahead of myself a little bit.

18 I want to show you one or more of these headlines.

19 MR. STEINGLASS: Can we show them to the jury and
20 the witness.

21 Thank you.

22 (Whereupon, an exhibit is shown on screen.)

23 Q. Scroll down to Page 3, first headline. Do you
24 remember anything about the history of this article in
25 particular, this headline that states "Ted Cruz Sex Scandal,

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1 Five Secret Mistresses?"

2 A. I don't remember the details of it, but I remember the
3 article.

4 Q. Do you remember discussing it with Michael Cohen prior
5 to its publication?

6 A. We would have discussed it, yes.

7 Q. I am going to show you one more from this exhibit,
8 which is 153B, Page 5, top headline, "Donald Trump Blasts Ted
9 Cruz's Dad for Photo with JFK Assassin."

10 Do you remember anything about the history behind this
11 article?

12 A. Yes. Dylan Howard had the Research Department take a
13 look at Ted Cruz's father's photos, and we matched the photos in
14 every different picture with that of Lee Harvey Oswald, and we
15 matched the two together. That's how that story was prepared
16 and created, I should say.

17 Q. And these articles that pertain to Ted Cruz, are they
18 mostly around the Spring of 2016?

19 A. May I see that?

20 Q. (Handing)

21 A. Yes.

22 Q. I am talking about the whole bunch of them. If you
23 want, we can flip through them just to make sure you are
24 comfortable answering that.

25 A. Yes.

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1 Q. So the question is: Are these articles mostly around
2 the Spring?

3 A. Mostly around the Spring.

4 Q. Of 2016?

5 A. Yes.

6 Q. Had Ted Cruz been gaining popularity as a candidate at
7 that time?

8 A. I believe so.

9 Q. Finally, I am going to show you 153C and ask you: To
10 whom do these headlines pertain?

11 A. Marco Rubio.

12 Q. And were these articles published toward the end of
13 2015, beginning of 2016?

14 A. Yes, they were.

15 Q. And had Marco Rubio been gaining popularity at that
16 time?

17 A. I believe he was.

18 Q. Do you remember when he dropped out of the race?

19 A. No, I don't.

20 Q. Why were you running these stories about Marco Rubio
21 and Ted Cruz and Ben Carson?

22 A. After the Republican debates, and based on the success
23 of some of the other candidates, I would receive a call from
24 Michael Cohen and he would direct me and direct Dylan Howard on
25 which candidate and which direction we should go. That's how

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1 the process happened.

2 Q. Now, I started to ask you before, did there come a time
3 when then candidate Trump introduced you to Stephen Bannon?

4 A. Yes, he did.

5 Q. Do you remember around when that was?

6 A. It was October of 2016.

7 Q. Who was Stephen Bannon at the time?

8 A. Stephen Bannon was a political consultant for Donald
9 Trump.

10 Q. And was he working on Donald Trump's campaign?

11 A. Yes, it was my understanding he was working on the
12 campaign.

13 Q. What, if anything, did Mr. Trump tell you about Stephen
14 Bannon?

15 A. He said to me that I believe that you and Stephen would
16 get along really well.

17 And Bannon, when I spoke to him, he said that he went
18 through some of these articles that you just displayed now, he
19 liked them very much. He had some other ideas and would I be
20 able to get him some issues, other issues of the National
21 Enquirer he could take a look at.

22 So in that meeting, I boxed up a bunch of issues of the
23 National Enquirer that had Hillary and stories along those
24 lines, and I remember sending it to his apartment. It was
25 someplace on the Upper West Side.

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1 Q. His apartment being?

2 A. Stephen Bannon's apartment.

3 Q. Did Donald Trump tell you specifically what or even
4 generally what he wanted you to do vis-a-vis Stephen Bannon?

5 A. He said that he thought that both of us could work very
6 well together.

7 And then after Bannon reviewed the articles, he called
8 me and he said that --

9 MR. BOVE: Objection.

10 THE COURT: Sustained.

11 Q. When you were starting to answer, don't say what he or
12 she was going to say.

13 Who is the "he" that you were referring to in the
14 answer that you were just about to give, is the "he" Stephen
15 Bannon or was the "he" Donald Trump?

16 A. The "he" was Stephen Bannon.

17 Q. What did you do after -- withdrawn.

18 Did Mr. Bannon ever pitch any articles to the National
19 Enquirer?

20 MR. BOVE: Objection.

21 THE COURT: Overruled.

22 You can answer.

23 A. What he suggested was that, based on some of the
24 Hillary articles that we had, that we should take a National
25 Enquirer reporter and have them go on the Hannity show and

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1 discuss the articles with Hannity.

2 Q. Articles that you had written?

3 MR. BOVE: Objection.

4 Move to strike.

5 THE COURT: Sustained.

6 That answer is stricken.

7 Q. So I am not asking you about articles that you did run
8 or you had already run. Did Stephen Bannon ever ask you to run
9 any particular articles?

10 MR. BOVE: Objection.

11 May I be heard at sidebar?

12 THE COURT: Sure.

13 (Whereupon, proceedings were held at sidebar:)

14 MR. BOVE: Thank you for hearing me, Judge.

15 This is entirely hearsay. I understand that the
16 witness at times is going beyond what Mr. Steinglass is
17 asking; I respect that.

18 In terms of whatever the jury is hearing regarding
19 admissible testimony, I don't think there is much of any
20 with respect to this topic on Mr. Bannon.

21 THE COURT: Mr. Steinglass.

22 MR. STEINGLASS: First of all, none of the
23 statements that were elicited are hearsay at all. They're
24 not statements that are being offered for the truth of the
25 matter asserted. These are people who are at the

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1 defendant's behest, who are working with the witness to
2 either pump up the positive stories about Mr. Trump or
3 pump negative stories about the opponents.

4 That is part of the whole scheme here. These are
5 almost like verbal acts. It's not for the truth of the
6 matter being asserted if the witness is asked if Stephen
7 Bannon asked the witness to run a particular story.

8 THE COURT: So you are not offering the statement
9 for its truth?

10 I need to give the jury an instruction.

11 MS. NECHELES: These stories, he is not offering
12 these stories, but the fact that Stephen Bannon asked this
13 of the witness for the truth.

14 He wants to put in evidence that Stephen Bannon
15 asked this to show that Stephen Bannon did, in fact, ask
16 it, that's the definition of "for the truth."

17 That is pure hearsay, the stories. He is not
18 putting the stories in, he is putting testimony about what
19 Stephen Bannon did.

20 MR. STEINGLASS: I think there are several answers
21 to that, but at least one of them is, if there are
22 multiple co-conspirators -- this is going to come up soon
23 anyway -- if there are multiple co-conspirators who are
24 conspiring to influence the election under the Election
25 Law, that is part of the secondary crime, which we have to

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1 prove, that there is a conspiracy to influence the
2 election.

3 So this seems to me to be the heart of the
4 admissible evidence in this case.

5 So I think it's res gestae of that conspiracy.
6 It's res gestae and co-conspirator statements.

7 MR. BOVE: Res gestae doesn't overcome the hearsay
8 exception.

9 This is the first we're hearing from the
10 Government about Stephen Bannon being an alleged
11 co-conspirator in connection with the so-called conspiracy
12 to influence the election.

13 The Government just elicited testimony that he is
14 a member of the campaign working to do, at best, based on
15 the hearsay that's been elicited so far, normal traditional
16 campaign work that everybody does. This should not come in
17 as a co-conspirator statement.

18 THE COURT: I will excuse the jury.

19 (Whereupon, the following proceedings were held in
20 open court:)

21 THE COURT: We're going to go ahead and take a
22 short break at this time.

23 You can step out.

24 (Jury leaving courtroom.)

25 THE COURT: Mr. Pecker, you can step out.

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1 (Witness leaving courtroom.)

2 ***

3 MR. BOVE: As I was saying at sidebar, we object
4 to this line of inquiry because what's happening here is
5 the Government is eliciting hearsay statements from Stephen
6 Bannon as a declarant. They're being offered for their
7 truth.

8 There's also been no notice that the Government
9 considers Mr. Bannon to be a co-conspirator in this case.

10 As the Court knows, there is no conspiracy
11 charged in the indictment. Statements by a campaign staff
12 member doing normal campaign work do not further any
13 alleged conspiracy that the People are relying on as a
14 predicate act.

15 And the limiting instruction that you are giving
16 with respect to the newspaper articles could not adequately
17 cure the risk of prejudice when we're talking about
18 testimony from statements like this.

19 It's just very far afield from what the charges
20 are in this case, what has been alleged before this line
21 was elicited about how this conspiracy functioned.

22 And so the reason I asked for the sidebar, it's
23 difficult on a question-by-question basis, other than just
24 continually, we think this whole line is inadmissible.

25 THE COURT: People.

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1 MR. STEINGLASS: So, several things.

2 First of all, part of what we will be eliciting
3 here is what Stephen Bannon asked the witness to do. The
4 question is not hearsay. It's not a statement that is
5 being offered for the truth. It is, as I suggested at the
6 bench, much more akin to a verbal act.

7 Moreover, and let me just say, I think that we've
8 gotten enough on this topic, so I don't really need to go
9 back into it. This may be moot. I do see this coming up.

10 Counsel said it yesterday in the opening, and
11 Mr. Bove said it again, and I think there is a
12 misperception about the law and about what this case is
13 about.

14 It is true that there is no conspiracy charge on
15 the indictment. However, as the Court is aware, Falsifying
16 Business Records in the First Degree requires an intent to
17 defraud, that includes the intent to commit or conceal
18 another crime.

19 The primary crime that we have alleged is New York
20 State Election Law Section 17-152. There is conspiracy
21 language in the statute. In that statute it reads:
22 "Any two or more persons who conspire to promote or
23 prevent the election of any person to a public office by
24 unlawful means and which conspiracy is acted upon by one or
25 more of the parties thereto, shall be guilty of a

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1 misdemeanor."

2 So while it's true that there is no conspiracy in
3 the second degree charge on the indictment, it is not true
4 that a conspiracy has not always been alleged to be part of
5 this case.

6 The entire case is predicated on the idea that
7 there was a conspiracy to influence the election in 2016.

8 Mr. Bove may interpret some of the evidence in a
9 way that is different from the way that we interpret it,
10 but that's what the jury's role is, to interpret what the
11 nature and scope of that conspiracy was. This is evidence
12 that will aid them in making that determination.

13 THE COURT: So I agree with what you are saying,
14 Mr. Steinglass. My concern is, did you give any notice
15 that you intended to elicit this type of information and
16 ask these type of questions from this witness about
17 Mr. Bannon?

18 MR. STEINGLASS: No, I don't think that we did.
19 Although, I am not sure that there is a requirement that we
20 do so.

21 That being said, I think this issue will come up
22 with other testimony more so and we can stop asking
23 questions about Stephen Bannon and his involvement in this
24 conspiracy.

25 THE COURT: Since we're talking about it now --

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1 MR. STEINGLASS: I am sorry, one thing more I will
2 say, I don't mean to interrupt you. To finish my thought,
3 Bannon's name is all over the exhibits and the discovery
4 that we provided to counsel. So even though we never
5 specifically say there is a view of the evidence that he
6 could be considered a co-conspirator in this aspect of the
7 conspiracy, it is not like this is the first time they're
8 hearing his name.

9 THE COURT: Yes.

10 MR. BOVE: I think there are about 11 million
11 pages of discovery, so the fact that somebody's name
12 appeared in those pages, I'm not sure that puts anybody on
13 notice that hearsay from that person as a declarant at
14 this trial is going to be elicited.

15 There is no misperception on this side about the
16 predicate that Mr. Steinglass just talked about.

17 I think what the issue is, that the existence of a
18 conspiracy argument is not the sole requirement for the
19 hearsay exception we're talking about.

20 The statement that is being offered also has to
21 further the conspiracy at issue.

22 I don't think there is any basis for a conclusion
23 that what was just elicited from Mr. Pecker regarding
24 Mr. Bannon is furthering the conspiracy that is alleged as
25 the predicate to the charges in the indictment. What that

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1 was, I submit, is very normal standard campaign work.

2 And I agree with Mr. Steinglass, that is the type
3 of thing that will come up throughout the trial. That
4 predicate should not be used as an excuse to shovel in
5 hearsay from witnesses who will testify at the trial.

6 THE COURT: Let me hear from Mr. Steinglass.

7 MR. STEINGLASS: I think we disagree with that
8 characterization. To the extent that Mr. Bannon could be
9 seen as a person who is contributing to the endeavor to
10 publish negative stories about Mr. Trump's political
11 opponents, that is very much a part of the conspiracy.

12 True, that in and of itself might not be criminal,
13 we can have much debate back and forth on this.

14 In connection with all of the other evidence in
15 the case and the robust components of the agreement that
16 was forged at Trump Tower to influence the election, that
17 was a piece of it.

18 The evidence doesn't have to be conclusive to be
19 admissible. It has to be relevant, and it's relevant to
20 this idea of the conspiracy, whether Mr. Bove has a
21 proved innocent explanation for it or not.

22 THE COURT: All right.

23 With regard to Mr. Bannon, at this point it
24 appears to be a moot point because you are going to move
25 on, right?

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1 MR. STEINGLASS: Yes.

2 THE COURT: This is something that we need to move
3 on moving forward.

4 I do agree with the People's assertions that they
5 are required to prove that there was an intent to commit
6 another crime.

7 And in this case the Court has given the People
8 permission to pursue three different theories of that.

9 So long as the People can establish that the
10 testimony that is being elicited does advance one of those
11 three theories, I think it's fine, I think it's acceptable.

12 MR. BOVE: Just so I understand it, when you say
13 "advance," you mean the otherwise inadmissible hearsay
14 at issue, to further the predicate that we're talking
15 about?

16 THE COURT: It has to be viewed in context. The
17 one statement that is made may not move the ball, but if
18 that one statement in the context of everything else does,
19 then it would be admissible.

20 Let's take a brief recess.

21 ***

22 (Recess.)

23

24

25

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2 (Whereupon, Theresa Magniccari was
3 relieved by Laurie Eisenberg as
4 Court Reporter.)

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Theresa Magniccari
Senior Court Reporter

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1 (The following proceedings are continued from the
2 previous page.)

3 (Whereupon, the case is recalled following a
4 recess.)

5 COURT OFFICER: Witness entering.

6 (Whereupon, the witness, David Pecker, having
7 been previously duly sworn and/or affirmed, resumes the
8 witness stand and testifies as follows:)

9 COURT OFFICER: Jurors entering.

10 (Whereupon, the jurors and the alternate jurors
11 are present and properly seated.)

12 THE COURT: Mr. Steinglass.

13 MR. STEINGLASS: Thank you.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. STEINGLASS:

16 Q During the time that you were the CEO at AMI, did you
17 have access to the business records of AMI?

18 A Yes, I did.

19 Q And did the business records of AMI include invoices,
20 vouchers, general ledger entries, non-disclosure agreements,
21 and amendments related to the subject matter of this case?

22 A Yes, they do.

23 Q Do the records also include emails and texts back and
24 forth between and among AMI employees, as well as
25 business-related texts and emails between AMI employees and

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1 third parties?

2 A Yes, they do.

3 Q Were those records, emails and texts kept and
4 maintained on AMI servers, computers and employee cell phones?

5 A Yes.

6 Q I am now going to hand you a thumb drive.

7 (Whereupon, a thumb drive is given to the witness
8 by the court officer.)

9 Q I'm going to ask you to take a look at it and let us
10 know if you've had an opportunity to review the documents
11 contained on that thumb drive.

12 A Yes, I have.

13 Q How do you know?

14 A I have my signature and the date that I looked at it.

15 Q Have you had an opportunity to review each of the
16 files contained on that thumb drive?

17 A Yes, I have.

18 Q A moment ago I asked you if some of the exhibits on
19 the thumb drive contain emails.

20 A Yes.

21 Q Does AMI maintain a server that hosts its emails?

22 A Yes, they do.

23 Q Do those servers capture information associated with
24 emails, including the "to", the "from", the "date", the "time
25 sent", things like that?

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1 A Yes, they do.

2 Q And is that information, generally, accurately
3 contained in the header of each email?

4 A Yes.

5 Q And do you expect that information to be accurately
6 recorded in the email system at AMI?

7 A Yes, I do.

8 Q Are the emails and headers captured and maintained on
9 the server in the ordinary course of AMI business?

10 A Yes, they are.

11 Q And is email used, in part, to conduct AMI business?

12 A Yes, they -- yes.

13 Q Are business emails relied upon in making business
14 decisions?

15 A Yes, they are.

16 Q And do the emails contained in these exhibits appear
17 to be in the standard AMI email format, including the headers?

18 Before you answer that, I'm referring, specifically, to the
19 emails contained in People's Exhibits 163 to 170.

20 Now you can answer.

21 A Oh. Yes, they are.

22 Q Now, directing your attention to People's Exhibits 171
23 through 179.

24 Do some of the exhibits on the thumb drive contain
25 texts among AMI employees and between AMI employees and

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1 third parties?

2 A Yes, they do.

3 Q Are those texts stored on AMI employee devices?

4 A Yes, they are.

5 Q Do the devices capture information associated with the
6 texts, again, including the "to", the "from", the "date", and
7 the "time sent"?

8 A Yes.

9 Q And do you expect that information to be accurately
10 recorded on those devices?

11 A Yes, I do.

12 Q During the time of your employment, did you have a
13 company-owned cell phone?

14 A Yes, I did.

15 Q Was that phone used for business purposes?

16 A Yes.

17 Q To the extent that AMI employees' phones are used for
18 business purposes, does AMI have the ability to extract
19 business-related information from those phones, including
20 texts?

21 A Yes, they do.

22 Q Have you ever participated in other situations where
23 litigation required AMI to collect and provide text messages
24 from employee phones?

25 A Yes, I did.

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1 Q And, very generally speaking, how is that
2 accomplished?

3 A The IT Department -- the Legal Department would put a
4 legal hold, send it to the IT Department, and the IT Director
5 would send -- would actually put a hold on all of the
6 content -- all of the content that was related to that case or
7 that issue. And you would receive a letter from Legal
8 Department telling you that this is being done.

9 Q When you say "IT", is that information technology?

10 A Sorry.
11 Information Technology.

12 Sorry about that.

13 Q It's okay.

14 So, during those instances where it became necessary to
15 take the texts from the employees' phones, did AMI have the
16 ability to physically take possession of those phones to
17 download or otherwise forensically image the texts that were
18 the subject of the litigation hold?

19 A Yes.

20 The Legal Department would actually call and ask for the
21 phone. And they would take -- they would do it from there with
22 the IT -- with the Information Technology Department.

23 Q Right.

24 Thank you.

25 Are texts used, in part, to conduct AMI business?

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1 A Yes.

2 Q And are such texts relied upon in making business
3 decisions?

4 A Yes, they are.

5 Q Were the texts exchanges contained on that thumb drive
6 collected and produced by AMI and its employees in response to
7 a search warrant seeking documents and communications relevant
8 to the subject matter of this case?

9 A Yes.

10 Q Do the texts contained in these exhibits appear to be
11 in the format in which AMI produced them in response to the
12 search warrant?

13 A Yes.

14 Q Are People's Exhibits 171 through 178 text message
15 files that were produced by AMI as Microsoft Excel documents?

16 A Yes.

17 Q And are People's Exhibits 171-A through 178-A PDF
18 versions of the corresponding numbered exhibit?

19 A Yes, they are.

20 Q So, for example, People's 171-A is a PDF version of
21 the Excel document of the document marked 171?

22 A Yes.

23 Q Are the PDF versions are exact copies?

24 A Yes, they are.

25 Q For each of the various types of records that you just

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1 mentioned, that is the emails, the texts, and also the
2 vouchers, the general ledger entries, the non-disclosure
3 agreements, the amendments, for each of those types of records,
4 are they generated in the regular and ordinary course of
5 business of AMI?

6 A Yes, they are.

7 Q And is it part of the business of AMI to make and keep
8 these records?

9 A Yes.

10 Q Are the entries in those records made at or close to
11 the time of the transaction or events to which they relate?

12 A Yes, they are.

13 Q And is the person or persons who makes them under a
14 business duty to do so accurately?

15 A Yes.

16 Q Okay.

17 MR. STEINGLASS: I offer into evidence People's
18 Exhibits 154 through 170, also 179, and the A's of this
19 for 171-A through 178-A.

20 THE COURT: Can you repeat that?

21 MR. STEINGLASS: Sure.

22 THE COURT: 154 through 170.

23 MR. STEINGLASS: 154 through 170. 179. And then
24 the A's of this for 171-A through 178-A. So, that would be
25 171-A, 172-A, all the way up to 178-A.

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1 THE COURT: Any objections?

2 MR. BOVE: Yes, Judge.

3 The only --

4 THE COURT: What are the grounds for your
5 objections?

6 MR. BOVE: The hearsay objections that I raised
7 yesterday, as well as the -- the testimony that was just
8 given about vouchers.

9 THE COURT: Come up.

10 (Whereupon, the following proceedings were held
11 at sidebar:)

12 MR. BOVE: Thank you, Judge.

13 So, the text message exhibits are 1 -- as I
14 understand, 171 through 179.

15 THE COURT: That's what I have.

16 MR. BOVE: With the cash pays.

17 To the extent those text messages were originated
18 by Mr. Pecker, we object on the hearsay grounds I
19 articulated yesterday; that even if they are business
20 records, the statements in the texts messages are being
21 offered for the truth, and they are inadmissible hearsay
22 on that basis.

23 When Mr. Pecker is a communicant on the text
24 messages, I understand those can come in; and the person
25 he's communicating with, the other side of those messages

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1 can come in for context.

2 There may be a subsequent point at this trial
3 where other witnesses testify and make other of these
4 texts messages admissible.

5 The fact that the text messages are business
6 records -- I agree the foundation has --

7 THE COURT: Are these being offered for the
8 truth?

9 MR. STEINGLASS: Yeah. I think they are.

10 I think to the extent that -- I think there's two
11 separate issues here:

12 One is: Are they business records?

13 It sounds like the defense is not contesting
14 that.

15 THE COURT: Right.

16 MR. STEINGLASS: The second is: Are there,
17 perhaps, embedded hearsay in some of these, not admissible
18 by another hearsay exception?

19 THE COURT: Right.

20 MR. STEINGLASS: We're all working hard here.

21 I do feel like it's a little late in the game to
22 be raising these objections. They've had these exhibits
23 for nine months, and they've been designated as exhibits
24 since August of last year.

25 But, to the extent that there may be some

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1 embedded hearsay in some of those, I think what the
2 defense needs to do is identify those portions of the
3 exhibits that they believe is embedded hearsay, and then
4 we can have argument as to whether or not there's a valid
5 hearsay objection.

6 But, we've laid a foundation they're admissible
7 as business records.

8 To the extent --

9 THE COURT: There is.

10 They're admissible as business records. There's
11 no dispute with that.

12 But, if it's hearsay, it's still hearsay, and you
13 still have to get it out.

14 I don't think the solution now is to send the
15 defense back to look through each one of these exhibits.

16 If you know any one you're offering contains
17 hearsay, maybe you can make it easier for all of us.

18 MR. STEINGLASS: Well, (laughs), I don't mean to
19 be laughing, Judge.

20 There's a lot of exhibits here, and there is a
21 lot of texts back and forth.

22 It's our position that, primarily -- there's one
23 thing that Mr. Bove said that I very much don't agree
24 with, which is that there's some relevance to whether the
25 declarant is present.

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1 A business record is a business record if it's
2 between two people.

3 THE COURT: We don't need to get bogged down with
4 that.

5 All I care about: Is there hearsay or isn't
6 there hearsay?

7 MR. STEINGLASS: The reason I'm saying that two
8 AMI employees having a text about a particular story like
9 the Dino Sajudin story, that is admissible hearsay --

10 THE COURT: It doesn't matter that he's not here
11 testifying.

12 MR. STEINGLASS: Both of them.

13 THE COURT: Right.

14 It doesn't matter, provided that they come in
15 under some other exception.

16 MR. STEINGLASS: Okay.

17 THE COURT: Because it would still be hearsay,
18 even if it's a business record.

19 MR. STEINGLASS: Well, okay.

20 But, I will say a couple of things.

21 First, I think that there -- that the fact that
22 it's a business record may mean that conversations among
23 employees about business-related matters are admissible
24 because they're business records, even if -- otherwise,
25 there would be no business record.

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1 Everything in a business record is, arguably, an
2 out-of-court statement being offered for the truth.

3 So, I do think that, for example, if a person who
4 was a party to a conversation was not under a business
5 duty to do so accurately, that would be embedded hearsay,
6 and that would need to find another exception to the
7 hearsay rule.

8 I believe the primary exception to the hearsay
9 rule on which we would rely is co-conspirator hearsay.

10 And I believe the testimony of Mr. Pecker has
11 already established a prima facie case of conspiracy, so
12 that statements made in the business records that are in
13 furtherance of that conspiracy would be admissible, in
14 addition, on those grounds.

15 But, I think -- I -- I am suggesting, gently,
16 that it would be an uncharitable view of the business
17 records exception to suggest that every statement
18 contained in a business record has to be independently
19 admissible under some objection other than business
20 records.

21 THE COURT: I agree. I agree.

22 MR. BOVE: Judge -- Judge, that's the law, that
23 when there's embedded hearsay, hearsay within hearsay,
24 that there has to be another basis for the statements to
25 be admissible. That's in the New York Rules of Evidence.

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1 It is not an exception to the hearsay rule that
2 the communicants are each employees at the company whose
3 -- the company whose business records are being offered.

4 The fact that the employees are on those records
5 does not make them admissible.

6 There's not been a foundation laid for a
7 suggestion, if I understood it correctly, that AMI --
8 every name of an employee is charged with a conspiracy, is
9 charged as a predicate.

10 It is their burden to establish admissibility.

11 THE COURT: I'm accepting the records into
12 evidence as business records.

13 If something comes up that you believe is hearsay
14 and is not admissible, you can make your objection.

15 MR. BOVE: Just, can I lay out numbers?

16 THE COURT: Yes.

17 MR. BOVE: 173 and 174 are text messages between
18 Mr. Pecker and Dylan Howard. So, we are not objecting to
19 those coming in on this hearsay within hearsay argument on
20 the basis I described.

21 Mr. Pecker, I understand, comes in.

22 Mr. Howard's statements are inadmissible hearsay,
23 but they're admissible to provide contents to what
24 Mr. Pecker said.

25 171-A, for example, is a series of messages

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1 between Dylan Howard and Gina Rodriguez, with factual
2 assertions being offered for the truth. So, we can address
3 them in realtime.

4 We raised this yesterday. We sent the People more
5 objections last night at eight o'clock.

6 I respect that the People were observing last
7 night.

8 MR. STEINGLASS: I know. I know.

9 MR. BOVE: I understand the timing of this.

10 We'll continue to communicate with them on it.

11 What I would ask for this afternoon, when we're
12 short on time, I've identified two strings where the
13 witness is on the stand, that we cover those, and we talk
14 a little more about the others.

15 THE COURT: I appreciate that. Thank you.

16 (Whereupon, the following proceedings were held
17 in open court:)

18 THE COURT: Your objection is noted and
19 overruled.

20 The documents are accepted into evidence as
21 business records.

22 To the extent that there may be any embedded
23 hearsay within them, we'll deal with it as it comes in.

24 MR. BOVE: Thank you, Judge.

25 (Whereupon, the aforementioned People's Exhibits

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1 are received in evidence.)

2 Q Does the name Dino Sajudin mean anything to you?

3 A Yes.

4 Q Who is Dino Sajudin?

5 A Dino Sajudin was a doorman at Trump Tower.

6 Q How did you come to learn about Dino Sajudin?

7 A Dylan Howard came to me with respect to a tip that he
8 heard and his reporters heard that --

9 MR. BOVE: Judge, objection to the substance of
10 the tip based on your in limine ruling.

11 THE COURT: Overruled.

12 Q Can you answer?

13 Just speak a little louder and closer to the microphone.

14 A Okay.

15 Thank you.

16 What I was saying is, you know, Dylan came to me. He
17 received -- when I say a "tip", a source -- from one of his
18 sources that Dino was in the market, selling a story that
19 Donald Trump fathered an illegitimate girl with a maid at -- at
20 Trump Tower, and the maid worked in his -- in Mr. Trump's
21 penthouse.

22 Q Roughly, when was it that Dylan Howard came to you
23 with this information about this source?

24 A It was, as I recall, October of 2015.

25 Q What did you do after you learned about this story

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1 about Mr. Trump fathering an illegitimate child with his
2 housekeeper?

3 A I immediately called Michael Cohen. And I described to
4 him exactly what I was told by Dylan. And I -- in addition, I
5 also gave him the name. I gave him Dino's name. And I gave him
6 the name of the housekeeper in the penthouse. And I asked him
7 to verify that, first with the Trump Organization Payroll, to
8 see actually -- if they were actually there during this period
9 of time or not.

10 And immediately, Michael Cohen said to me, he says,
11 "Absolutely not true." He says, "But I'll check it out."

12 Q When he said, "Absolutely not true," did you take that
13 to mean that he was denying that Mr. Trump had, in fact,
14 fathered a child with his housekeeper?

15 A That's correct.

16 Q Now, why upon learning of this story did you reach out
17 to Michael Cohen in the first place?

18 A In August, we had a -- we had our meeting in August,
19 we had our agreement that anything that I heard in the
20 marketplace that was going to be negative to Trump -- to
21 Mr. Trump or his family or the campaign, I would notify Michael
22 Cohen immediately.

23 Q So, this was part of the agreement that you had made?

24 A Yes.

25 Q How did you leave it with Michael Cohen after that

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1 first call?

2 A That he would verify the names and that he would call
3 me back.

4 Q Okay.

5 Tell the jury what happened next.

6 A So, Michael Cohen called me back, if it was that day
7 or the next day, and said that he verified the two names on --
8 on payroll, so they actually worked there; and he asked me to
9 check out the story.

10 Q Did he indicate one way or the other whether he had
11 spoken to Mr. Trump about the story?

12 A (Pause). I believe that was at a later time.

13 Q I'm sorry?

14 A I believe that was later. At a later time.

15 Q Got it.

16 How did you leave it after that second call?

17 A I spoke to Dylan, and I asked Dylan to see -- to check
18 the story out, to verify whether it could be true or not and to
19 -- one, we should prepare a Source Agreement. We should have
20 Dino take a polygraph --

21 Q Stop right there.

22 I didn't mean to interrupt you.

23 What you were about to say, don't say that.

24 Just say, please, what steps you were gonna take to pursue
25 the story, not referring to the last thing you mentioned.

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1 A I asked Dylan to verify if the story was true or not.

2 Q Okay.

3 Thank you.

4 You mentioned a Source document; yes?

5 A Yes.

6 Q What is a Source document?

7 A A Source document is an agreement with a potential
8 source or tipster that they have a story. And the agreement is
9 between the magazine and the tipster or the source that says
10 for a period of time, 90 days, 120 days, we have exclusive
11 rights, the magazine has exclusive rights to the story. And
12 then there's a compensation in the agreement based on if the
13 story is published or not.

14 Q Did you enter into such an agreement with Mr. Sajudin?

15 A Yes, we did.

16 Q How did that come about?

17 A I asked Dylan to negotiate a price -- to negotiate a
18 number, a price to buy the story and take it off the market.
19 And Dylan went ahead.

20 And there was two parts to this. The first part is, our
21 normal procedures is we have the source or the tipster take a
22 polygraph test, and we normally pay \$500 for a polygraph test.

23 So, we took the polygraph --

24 Q Please don't tell us any polygraph results. Just keep
25 that.

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1 A Um, I pursued the story after -- I pursued the story.

2 That's what he said. We pursued the story.

3 Q Did you discuss the purchase of the story with Michael

4 Cohen?

5 A Yes.

6 Q Tell us about that conversation.

7 A I called Michael Cohen up. I called Michael Cohen, and

8 I said that we have to go forward with the story.

9 And I -- he said, "How much?"

10 I said, "Dylan negotiated a price of \$30,000."

11 So he said, "Who's gonna pay for it?"

12 So I said, "I'll pay for it. This can be a very big story.

13 I believe it's important that it should be removed from the

14 market. So we'll acquire the story."

15 And then he said, "Thank you very much." He thanked me. And

16 he said that The Boss would be very pleased.

17 Q Who did you understand "The Boss" to be?

18 A "The Boss" would be Donald Trump.

19 Q Did you -- now, you said earlier that at some point

20 you -- it became clear to you that Michael Cohen had spoken

21 with Donald Trump about the Dino Sajudin story?

22 A Yes.

23 Q Can you tell us, what makes you say that?

24 A Because there was a second conversation, after that,

25 where he called and said that the story is absolutely not true.

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1 He said that the -- Mr. Trump would take a DNA test, that he is
2 German-Irish, and this woman is Hispanic, and it's absolutely
3 impossible.

4 And I told Michael Cohen that that won't be necessary;
5 we'll vet the story.

6 Q So, let me be clear about something. Prior to this
7 arrangement to purchase this story from Dino Sajudin, had you
8 ever paid a source to kill a story about Donald Trump?

9 A No, I did not.

10 Q Now, what was the reason that you were willing to pay
11 for this story at this point?

12 A I had a number of reasons.

13 One, I thought it was very important that Dino wouldn't be
14 shopping the story to other media outlets, and it would get in
15 the marketplace very quickly. That was part one.

16 Part two, I bought the story, if the story was true and I
17 published it, it would be probably the biggest sale of the
18 National Enquirer since the death of Elvis Presley.

19 Q Did you have any intention of publishing it at the
20 time you negotiated this deal?

21 A At that time, no.

22 Q What was your intention in terms of publishing it,
23 depending on how your vetting went?

24 A If the story came back true, I would have published
25 the story shortly after it was verified.

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1 Q Before or after the election?

2 A I would have published it after the election.

3 Q So, even if the vetting came back that you believed
4 the story to be true, you would have held the story until after
5 the presidential election of 2016?

6 A That was the conversation I had with Michael Cohen,
7 and that's what we agreed to.

8 Q Just to be clear, during the period when this deal was
9 being negotiated, did you ever speak directly with Mr. Trump
10 about the doorman story, or did all conversations go through
11 Michael Cohen at this point?

12 A All my conversations were directly with Michael Cohen.

13 Q I think you told us you did, in fact, enter into a
14 contract with the doorman, correct, with Mr. Sajudin?

15 A Yes.

16 Q I'm going to display to everyone, since it's in
17 evidence, People's Exhibit 154.

18 (Whereupon, the exhibit is shown on the screens.)

19 Q So, this is Page 1 of People's 154.

20 Do you recognize this document?

21 A Yes, I do.

22 Q What is this?

23 A This is the Source document with Dino Sajudin.

24 Q Is this an exact copy of the agreement that AMI
25 entered into with Mr. Sajudin regarding the story that the

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1 defendant had fathered a child with his housekeeper?

2 A Yes.

3 Q Okay.

4 I'm going to blow up the top of it and ask you, when was
5 this agreement dated?

6 A 11-15-2015.

7 Q So, the part at the top, can you read us, pretty much,
8 that whole part that's blown up?

9 A "\$30,000 payable upon publication as set forth below."

10 Q That's the payment?

11 A That's the payment.

12 Q And who is the "Source"?

13 A The "Source" is Dino Sajudin.

14 Q You see where it says "Exclusive"?

15 A (No response).

16 Q Below "Payment".

17 A Yes. I see it.

18 I'm sorry.

19 Should I read it?

20 Q If you don't mind.

21 Would you rather me read it? It's long.

22 A "Source shall provide AMI with information regarding
23 Donald Trump's illegitimate child; and any and all
24 documentation, including but not limited to letters and any
25 legal documents and photographs in Source's possession relevant

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1 to the Exclusive."

2 Q Can you read the handwritten portion, as well?

3 A "AMI agrees not to" -- I can't read that word.

4 Q "Name"?

5 A Oh.

6 "Name, identify Source in any published articles."

7 Q Okay.

8 Is there a date to indicate when that handwritten portion
9 was added?

10 A Also 11-15-2015.

11 Q There's also a heading called "Exclusivity Period";
12 right?

13 A "Exclusivity Period," yes; that's correct.

14 Q What is the exclusivity period at this point?

15 A That was our exclusivity to own the article for the --
16 it says here for three months, which is the normal process,
17 90 days, after -- after we published the Exclusive.

18 Q So, in layman's terms, for people who are not in the
19 publishing business, what does this mean?

20 A It means that we hold the article, and it's up to the
21 publisher or -- it's up to the publisher whether they're going
22 to publish the article or not. And in paying the \$30,000, you
23 have the full exclusive for it, and you have the choice whether
24 to publish the article or not.

25 Q You retained the ability to decide whether or not to

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1 publish this article?

2 A We had the rights to publish it; yes, that's correct.

3 Q But, meanwhile, Mr. Sajudin couldn't take this story
4 anywhere else?

5 A That's correct.

6 Q I'm going to show you People's 155 in evidence.

7 (Whereupon, the exhibit is shown on the screens.)

8 Q I'm going to ask you if you know what this document
9 is.

10 A (No response).

11 Q Do you want me to blow up the top?

12 A Yes.

13 It's an Amendment. An Amendment to the Agreement.

14 Q So is this, People's 155, an Amendment to the Source
15 Agreement that we just saw as People's 154?

16 A Yes. That's correct.

17 Q And when is the Amendment dated?

18 A December 17, 2015.

19 Q Okay.

20 You see that at the bottom of the page?

21 A Yes.

22 Q Okay.

23 So, I'm going to ask that we blow up Paragraphs 1, 2 and 3
24 of this Amendment.

25 And I'm going to ask you, how did this Amendment amend the

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1 original Agreement? What are the ways in which it amended it?

2 I'm going to ask you to walk us through -- maybe even read
3 Paragraphs 1, 2 and 3.

4 A "Paragraph 1. AMI shall pay Source the payment set
5 forth in the Agreement within five days of the receipt of this
6 Amendment signed by Source."

7 So, we paid him the \$30,000 within -- by -- the Agreement,
8 five days from when the Agreement was signed.

9 Q Let me stop you before we move on to the next
10 paragraph.

11 Is it unusual to pay a source before the story is run?

12 A Yes. It is.

13 Q Why did you do that in this case? Why amend the
14 Agreement in this way?

15 A Dylan finished the vetting of the story, and we hired
16 a private investigator. We sent reporters out to where,
17 supposedly, the illegitimate child was. And we discovered that
18 it was absolutely, 1,000 percent untrue.

19 Q So, why are you paying \$30,000 for an untrue story?

20 A Because -- because the article says that if the story
21 got out to another publication or another media outlet, it
22 would have been very embarrassing to the campaign.

23 Q So, this was a way to lock it up?

24 A That's correct.

25 Q Okay.

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1 Paragraph 2. How -- can you read that to us and tell us how
2 that modified the original Source Agreement.

3 A "The exclusivity period set forth in the Agreement is
4 extended in perpetuity and shall not expire." Which means that
5 we own this story forever.

6 Q The original Source Agreement, I believe you told
7 us --

8 A Ninety days.

9 Q -- ninety days, and now it's --

10 A Evergreen.

11 Q Forever.

12 Do you mind if I ask you to read that --

13 A Yes.

14 "Source agrees that he shall not disclose the Exclusive or
15 the terms of the Agreement or this Amendment to any third party
16 except as required by law or court order, provided Source gives
17 AMI prompt written notice of such requirement or order so AMI
18 may seek an appropriate protective order or other relief. In
19 the event Source breaches this provision, Source shall be
20 liable to AMI and shall pay to AMI as liquidated damages, and
21 not as a penalty, the sum of \$1 million, which amount
22 represents the result of a reasonable endeavor by AMI to
23 ascertain the fair average compensation for any damages that
24 AMI will sustain as the result of such disclosure, and that the
25 amount of those damages is impracticable to calculate or

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1 ascertain with certainty or specificity."

2 Q What does that mean to the --

3 A What it means is that if -- if you don't mind, I'm
4 gonna call him "the doorman". If the doorman went out and tried
5 to -- after receiving the \$30,000, went out and tried to sell
6 the story, and that whoever looked at it, they would know
7 before anybody would publish anything that story -- they would
8 also find out the same results that we did, that the story was
9 false.

10 He would -- "he" being "the doorman" -- would breach this
11 Agreement and owe American Media a million dollars.

12 So, it was, basically, a -- a lever over him to make sure
13 that that wouldn't happen.

14 Q To make sure that he didn't tell his story to someone
15 else?

16 A Someone else. That's correct.

17 Q So, you told us, and this makes it clear, that you
18 paid, to use your phrase, "the doorman" \$30,000.

19 Is that a typical sum for a source?

20 A No, it's not.

21 Q How is it atypical?

22 A A typical source payment can be anywhere from \$250 to
23 \$5,000; or, if it's a bigger celebrity, up to \$10,000.

24 Q So, why pay so much for this story?

25 A I made the decision to buy the story because of the

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1 potential embarrassment it would have to the campaign.

2 Q To the campaign?

3 A And Mr. Trump.

4 Q The campaign and Mr. Trump?

5 A Yeah.

6 Q Um, what about the million-dollars liquidated damages;
7 is that a typical sum?

8 A No. It's not.

9 Q Where did that come from?

10 A When I was finalizing this Amendment, I had several
11 conversations with Michael Cohen. And Michael Cohen suggested
12 that the opportunity to put in for liquidated damages and the
13 million-dollar penalty. So, that's why I asked Dylan to include
14 it in this Agreement.

15 Q Based on your conversations with Michael Cohen?

16 A Yes.

17 Q What about the extending it, that you heard, from
18 90 days to in perpetuity; whose idea was that?

19 A I think that was done jointly between myself and
20 Michael Cohen.

21 Q Okay.

22 I am now going to display for you People's Exhibit 164 in
23 evidence.

24 (Whereupon, the exhibit is shown on the screens.)

25 Q Page 1.

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1 MR. BOVE: Objection.

2 I ask that this be taken down.

3 THE COURT: Please approach.

4 Can you bring the exhibit?

5 MR. STEINGLASS: Sure.

6 (Whereupon, the following proceedings were held
7 at sidebar:)

8 MR. STEINGLASS: I have a hard copy I can show
9 you. This is 164.

10 Is your objection in reference to the polygraph?

11 MR. BOVE: Two issues.

12 One is, there's a reference to the polygraph.

13 When there was testimony about this, I didn't
14 want to jump up and draw attention to it.

15 It was not intentional, I see.

16 We will ask for a limiting instruction tomorrow
17 on this issue.

18 I thought this exhibit, with the specific
19 reference of the polygraph, should be redacted.

20 But, in addition -- I don't think this is the
21 one.

22 MR. STEINGLASS: 164; right?

23 MS. HOFFINGER: 164.

24 MR. BOVE: This is an email where there are
25 factual assertions being offered for its truth that should

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1 not come in through this witness.

2 This is the hearsay.

3 MR. STEINGLASS: This is a perfect example of
4 what I think is a business record.

5 (Whereupon, the document is shown to the Court.)

6 MR. STEINGLASS: Notwithstanding the fact that it
7 contains reference to non-testifying witnesses, kind of
8 vintage business record.

9 THE COURT: This is exactly what a business
10 record is. I have no problem with it.

11 MR. BOVE: Just so the record is clear --

12 THE COURT: Sure.

13 MR. BOVE: I appreciate you hearing me out on
14 this.

15 We're not disputing it's a business record.

16 We're saying the text of the making factual
17 assertions, that require an independent hearsay exception,
18 and there's not one for these assertions.

19 MR. STEINGLASS: I disagree.

20 And I think Your Honor has acknowledged that.

21 This says "polygraph letter". It doesn't say
22 anything about polygraph result.

23 I think it's fine.

24 If you want, I can redact that.

25 THE COURT: Can you redact the "polygraph"

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1 portion of it?

2 MR. STEINGLASS: Sure.

3 THE COURT: Other than that, I'll accept it.

4 MR. STEINGLASS: Thank you.

5 (Whereupon, the following proceedings were held
6 in open court:)

7 THE COURT: Subject to the redaction we
8 discussed, the exhibit can be displayed.

9 Q People's 164. We'll put it back up.

10 (Whereupon, the exhibit is shown on the screens.)

11 Q Can you tell us a little bit about this email, first
12 of all?

13 Well, actually, my first question: Is this an email?

14 A Yes, it's an email.

15 Q The second question is: What is the date of the
16 email?

17 A December 18, 2015.

18 Q And who is it from?

19 A Natasha is a reporter that works for Dylan Howard. And
20 Liz Ruotolo -- sorry about this -- Liz Ruotolo is an accounts
21 payable person at American Media.

22 Q So, it's an email from a reporter to an accounts
23 payable person?

24 A That's correct.

25 Q Is Dylan Howard among the people that are cc'd on the

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1 email?

2 A Yes.

3 Q Does the email reference attachments?

4 A Yes.

5 Q And are -- if we -- I'm going to scroll to Page 2 and
6 read the attachment in a minute.

7 Here it is.

8 (Whereupon, an exhibit is shown on the screens.)

9 Q Here's Page 2.

10 Is this the attachment that was included with the email?

11 A Yes. That's correct.

12 Q Okay.

13 So, going back to Page 1, can you just read us the
14 substance of the email?

15 A It -- it's all the paperwork to send the -- is that --

16 Q We're going to fix this.

17 (Whereupon, an exhibit is shown on the screens.)

18 A "To send the wire transfer," which is what the email
19 is requesting, "you need all the supporting documentation."

20 So, the supporting documentation would be the invoice which
21 is attached, the Source Agreement, and the copy that has two
22 parts to it, his W9 and I guess whatever agreements that they
23 had.

24 Q Is the W9 a Tax Form?

25 A W9 is a Tax Form; correct.

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1 Q Is this, essentially, directing the person in Accounts
2 Payable to pay Mr. Sajudin as part of the contract that you had
3 entered into with him?

4 A That is correct.

5 Q And Page 2, is that a -- the invoice for the payment
6 here?

7 A Yes.

8 And that would be an invoice that the company internally
9 would have prepared.

10 Q Okay.

11 Who does it say this attachment is from?

12 A Barry Levine is the East Coast News Director for the
13 National Enquirer. And he sent an invoice -- excuse me -- sent
14 an email to his reporter.

15 Q So, why was the invoice prepared by someone at AMI,
16 even though it was billing AMI?

17 MR. BOVE: Objection.

18 THE COURT: Sustained.

19 Q Was the invoice prepared by someone at AMI?

20 MR. BOVE: Objection.

21 THE COURT: If you know, you can answer.

22 A Our normal -- our sources are single -- are people who
23 don't have any companies. They don't have the availability to
24 create an invoice.

25 So, once we have the Source Agreement prepared -- and to

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1 process it through the AMI system, you need an invoice. So, the
2 Source Agreement supports the invoice, what the amount is going
3 to be and who was being paid for.

4 And then we have the W9 prepared, so the Source will sign
5 it, so we withhold the taxes.

6 MR. BOVE: Objection.

7 Move to strike.

8 THE COURT: Overruled.

9 Q Can you read the body of the email or, I guess, the
10 invoice attachment?

11 A "This serves as an invoice for an immediate \$30,000
12 bank transfer payment from AMI to Source Dino Sajudin regarding
13 Trump non-published story."

14 Q Before you move on, what did you understand "Trump
15 non-published story" to be a reference to?

16 A Well, Barry Levine --

17 MR. BOVE: Objection.

18 THE COURT: Overruled.

19 You can answer.

20 A Barry Levine would know -- knows because he was told
21 that we're not gonna publish any negative stories on Donald
22 Trump. So, he correctly wrote the invoice -- excuse me -- the
23 email to state here that it wasn't going to be published.

24 Q Okay.

25 And you can keep going. Read the next one.

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1 A I'm sorry.

2 "Attached is the paperwork, including the execution of the
3 contract Amendment signed by Mr. Sajudin, as prepared yesterday
4 by Cameron Stracher for this sole purpose of payment."

5 Q Who is Cameron Stracher?

6 A He's the -- he was the General Counsel in American
7 Media.

8 Q Thank you.

9 So, you told us a minute ago that after you investigated
10 the story, you determined that it was not true.

11 A That's correct.

12 Q And did you communicate that to Michael Cohen?

13 A Yes, I did.

14 Q And can you describe that?

15 A I told Michael Cohen the story was not true. I told
16 him that the doorman is very difficult to deal with. I
17 mentioned to him that he's probably going to try to shop the
18 story to someone else, and that we don't really share any
19 concerns here since the story is not true anyhow, so I would
20 suggest that we release him.

21 Q And how did Michael Cohen react to that?

22 A Michael Cohen said -- first, he didn't understand why
23 I would ever release him.

24 And then I said that -- to have him lock -- to have him
25 in -- to have him locked in to us, it's only gonna cause more

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1 problems. So, I suggested that I want -- I'm gonna release him
2 one way or the other other, so -- I'm sorry.

3 Q No.

4 Go ahead.

5 A So, he said, "When?"

6 And I said, "Well, I'd like to release him now."

7 He said, "No. You release him after the election."

8 Q So, Michael Cohen asked you not to release Dino
9 Sajudin from the Source Agreement until after the presidential
10 election?

11 A Yes.

12 Q And just to be clear, Mr. Pecker, did any AMI
13 publications ever print Mr. Sajudin's story?

14 A No, they didn't.

15 Q Did there come a time when you did release the doorman
16 from the Exclusivity Agreement?

17 A Yes, I did.

18 Q I'm showing you now People's 169 that's in evidence.

19 (Whereupon, the exhibit is shown on the screens.)

20 MR. BOVE: Same objection, Judge.

21 THE COURT: Noted.

22 MR. STEINGLASS: Can you blow it up a little bit,
23 please?

24 Q So, what is this?

25 A (No response).

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1 Q Generally speaking.

2 A I just want to say, Sharon Churcher is another
3 reporter that worked for Barry Levine.

4 And Cam is saying here to Dino that he is confirming what
5 Sharon told him, that Dino has the right to go ahead and sell
6 or market the story.

7 Q Okay.

8 So, generally speaking, is this an email from Cameron
9 Stracher, who I believe you told us was the General Counsel?

10 A Yes.

11 Q To Dino Sajudin?

12 A That's correct.

13 Q Do you understand this email to be informing
14 Mr. Sajudin that he has now been released from the Exclusivity
15 Agreement that you had signed -- that AMI had signed with him?

16 A Yes.

17 That's what he requested for a long period of time.

18 Q When was he released?

19 When was this email sent?

20 A December 9, 2016.

21 Q After the presidential election?

22 A Yes.

23 Q Do you know somebody named Karen McDougal?

24 A Yes, I do.

25 Q Who is Karen McDougal?

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1 A Karen McDougal was a Playboy model.

2 Q How did you first hear of her?

3 A Dylan came to me in June of -- early June of 2016 and
4 said that he received a call from one of his major sources in
5 California that there's a Playboy model who is trying to sell a
6 story about a relationship that she had with Donald Trump for a
7 year.

8 Q What kind of "relationship"?

9 A Romantic relationship.

10 Q Did he say one way or the other whether it included a
11 sexual relationship?

12 A I'm sorry. I couldn't hear that. I apologize.

13 Q Sorry.

14 Did Dylan Howard -- when you first learned of this story,
15 did Dylan Howard tell you whether or not the story, the
16 relationship that you described that Ms. McDougal was referring
17 to included a sexual component?

18 A Yes, he did.

19 Q Yes, he told you?

20 A He thought that. He didn't know at that time.

21 Q Okay.

22 So, what did you do when you learned about Karen McDougal
23 and her claims regarding Mr. Trump?

24 A I called Michael Cohen, and I told Michael Cohen
25 exactly what Dylan told me about this Playboy model and that

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1 she had a relationship.

2 And immediately -- I didn't even finish the conversation
3 when he said, "That's untrue. Absolutely not true."

4 But I -- so I said, "Just wait a second. This is a little
5 different." I said, "I think that we should vet the story out
6 first."

7 So he thought -- Michael Cohen said, "Yes, I think that's a
8 good idea," he said.

9 I said, "I'm gonna speak to Dylan, and I'll let you know
10 what our next steps are going to be."

11 Q Did you discuss at that point payment for this story?

12 A No, we did not.

13 Q What did you discuss in terms of next steps?

14 A Dylan, when I mentioned to him that I wanted to vet
15 the story out, we should proceed on verifying it, he -- he had
16 a conversation with his source, who is an attorney, who is
17 representing this Playboy model. I did not know the name. I did
18 not know any amounts. That's all that I knew.

19 So I told him to go out to California, interview the model,
20 the Playboy model, and let me know what the details are.

21 I called back Michael Cohen, and I told him what I was
22 going to do. And I told him that we would keep him apprised
23 after Dylan went out and found out exactly what the details
24 were.

25 Q Okay.

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1 So, just to clarify the pronouns, when you said you asked
2 "him" to go out and interview the person, you asked who to go
3 out?

4 A I asked Dylan Howard. I asked Dylan Howard to go.

5 Q And did you tell Michael Cohen that you were doing
6 that?

7 A Yes.

8 I called Michael Cohen, and I told him exactly that.

9 Q Around this time, around how often were you speaking
10 to Michael Cohen?

11 A I was speaking to him, prior to this, probably a
12 couple of times a week.

13 When this subject came up, this issue came up, I spoke to
14 him much more frequently. Almost every day. Sometimes a couple
15 of times a day.

16 Q Do you remember about when it was that you were having
17 these conversations?

18 A It was -- as I recall, it was the first week of June.

19 Q Which year?

20 A I'm sorry.

21 2016. 2016.

22 Q Did Michael Cohen ask you on occasion to communicate
23 with him through any particular means?

24 A Yes.

25 Michael Cohen said to me that we shouldn't be talking like

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1 this over a landline. He said we should use Signal.

2 I didn't really know what Signal was. I never heard of it
3 before.

4 And he said it was an app. He explained to me that it was
5 an encrypted app where nobody could trace it, and that there's
6 no paper trail, and there's nobody that can listen in to the
7 conversations. And then the conversation, apparently, is
8 destroyed after you have the call.

9 I still to this day don't know if that's true or not.

10 Q Did you agree to use the Signal app to communicate
11 with Michael Cohen from time to time?

12 A I did.

13 And every time I used it, it dropped off after like
14 30 seconds. But I would call back.

15 Q Did there come a time -- did you ever come to
16 believe that Michael Cohen had spoken with Mr. Trump about
17 Ms. McDougal's claims?

18 A Yes, I did.

19 Q Can you explain to the jury how you became to believe
20 that?

21 A I was at my -- I was in New Jersey at my largest -- at
22 my largest investigator in American Media, making a business
23 presentation. And their assistant for their office came in and
24 said, "Donald Trump is on the phone for you."

25 So, I left to pick up the phone to speak to Mr. Trump.

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1 And he mentioned to me that -- he said, "I spoke to
2 Michael." He said, I -- "He told me about", uh -- uh -- at that
3 time -- "He told me about" -- he said, "He told me about
4 Karen." And he said to me, "Uh, what do you think?"

5 So, I said that after -- after Dylan Howard interviewed
6 her, she claimed that she had an offer from ABC, Dancing With
7 the Stars, for this -- for her story, and she had -- and there
8 was an offer from a Mexican group for, from what Mr. Trump told
9 me, was \$8 million.

10 And I said, "No. I don't believe there was an offer for
11 \$8 million. It's my understanding that she doesn't want her
12 story published. And I think that the story should be
13 purchased. And I believe that you should buy it."

14 And Mr. Trump said to me, he said, "Look, everything" -- he
15 says, "I don't buy any stories." And he said that, "Any time
16 you do anything like this, it always gets out."

17 So I said -- so I said, "I still believe that we should
18 take this story off the market."

19 And he said, "Let me think about it, and I'll have Michael
20 Cohen call you back in a few days."

21 Q Okay.

22 I'm going to come back to that conversation that you had
23 with Donald Trump.

24 But, I want to go back to something you said before, which
25 is you said that you dispatched Dylan Howard to go interview

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1 Ms. McDougal.

2 A Yes.

3 Q Where did you dispatch Dylan Howard to go?

4 A He went to Los Angeles. He went to his source, who is
5 this attorney. His name is Keith Davidson. He was representing
6 this Playboy model.

7 And he interviewed -- "he" being -- I'm sorry. Dylan Howard
8 interviewed Karen for two to three hours.

9 Q Did you, personally, attend that meeting?

10 A No, I did not.

11 Q Did Michael Cohen?

12 A No, he did not.

13 Q Did you speak with Michael Cohen during Mr. Howard's
14 interview of Ms. McDougal?

15 A I told Michael that during -- it was a two-week period
16 of time. I told him if I had the date correctly, I think it was
17 June 20th that Dylan was going out to sit down and interview --
18 and do the interview, and that he would call us when he was
19 there.

20 So, by the time when I first discussed this with Michael
21 Cohen and to the time that Dylan actually went to California, I
22 had multiple calls every single day: "When is he going?"; "When
23 is he gonna know?"; "Is it done yet?"

24 It was all of these various different questions.

25 And I said, "Just relax and wait until Dylan has the

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1 interview, and I'll call you as soon as I know."

2 Q I keep coming back to your pronouns because I want to
3 make sure I know who you're talking about.

4 Who did you have these multiple calls with? Who kept
5 calling you and asking you about this?

6 A I'm sorry.

7 Michael Cohen kept calling me and asking me.

8 Q You said that the interview that Dylan Howard
9 conducted with Karen McDougal was in Los Angeles on
10 January 20th; is that right?

11 A Yes.

12 Q Did you speak with Michael Cohen on that day, during
13 the time that Ms. McDougal was being interviewed by Dylan?

14 A Yes.

15 Michael called me to find out if I heard from Dylan yet.
16 I said, "No." I said, "When I hear from him, I'll set up a
17 call for the three of us, and Dylan can tell you exactly what
18 he's going to tell me."

19 Q How would you describe Michael Cohen's tone during
20 those calls?

21 A Michael was very agitated. It looked like he was
22 getting a lot of pressure to get the answer, like, right away.

23 Q What makes you say that?

24 A He kept on calling; and each time he called, he seemed
25 more anxious.

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1 Q Did you understand -- did you have an understanding as
2 to where that pressure to find out more was coming from?

3 A Well, you know, I assumed that he had the conversation
4 with Mr. Trump; and he -- and Mr. Trump was asking Michael
5 Cohen, "Did we hear anything yet?"

6 This is only a theory on my part.

7 I did not speak to Mr. Trump.

8 Q Not until you were in New Jersey and you got that
9 call?

10 A That's correct.

11 THE COURT: Is this a good time to break?

12 MR. STEINGLASS: I think it's probably a good
13 time to break, yes.

14 THE COURT: All right, jurors. We're going to go
15 ahead and call it a day, as we discussed.

16 Before I excuse you, I remind you not to talk
17 among yourselves or anyone else about anything related to
18 the case.

19 Please keep an open mind.

20 Do not form or express an opinion about the
21 defendant's guilt or innocence until all the evidence is
22 in, I have given you my final instructions on the law, and
23 I have directed you to begin deliberations.

24 Do not accept, request, agree to accept, or
25 discuss with any person receipt or acceptance of any

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1 benefit in return for any information concerning the
2 trial.

3 Report to me any incident within your knowledge
4 by any person to improperly influence you or any member of
5 the jury.

6 Do not visit or view any of the locations
7 discussed in the testimony.

8 Do not use any program or electronic device to
9 search for any location heard in the testimony.

10 Do not read, view or listen to any accounts or
11 discussions of the case.

12 Do not attempt to research any fact, issue or law
13 related to the case.

14 Do not communicate with anyone about the case by
15 any means, including by telephone, text messages, email or
16 the internet.

17 And do not Google or otherwise search for any
18 information about the case or the law which applies to the
19 case or the people involved in the case.

20 I'll see you Thursday.

21 Enjoy your break. Take care.

22 (Whereupon, the jurors and the alternate jurors
23 are excused.)

24 THE COURT: You may be seated.

25 Thank you, sir.

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1 You may step down.

2 (Whereupon, the witness is excused.)

3 THE COURT: Mr. Bove, your objection is noted.

4 I'm certainly going to use today and tomorrow to
5 conduct further research into it.

6 I would ask you, as well, if you could forward
7 anything to me to help guide the Court.

8 And I would ask the People, as well, if you could
9 forward any authority to the Court that would help me.

10 MR. BOVE: Could we have the Court's permission
11 to put in a letter not to exceed two pages on this issue?

12 THE COURT: Sure. That's fine.

13 Can you get it in by the end of the night?

14 MR. BOVE: Yes, sir.

15 THE COURT: Have a good night, everyone.

16 MR. STEINGLASS: Thank you.

17 (Whereupon, the case is adjourned to 4-25-24.)

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